134-206

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1889.**

No. 134.

JAMES G. TRACY, TIMOTHY H. SCANLAN, HENRY H. DOOLEY, ET AL., PLAINTIFFS IN ERROR,

*vs.*

LOUIS TUFFLY, ASSIGNEE OF W. T. TUFFLY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

**FILED OCTOBER 8, 1886.**

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1, 2, & 3 [Seal United States Circuit Court, Eastern District of Texas.]

In the Circuit Court of the United States for the Eastern District of Texas, at Galveston.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY and Others. } Law. No. 1352.

Be it remembered that at a regular term of the circuit court of the United States for the eastern district of Texas, in the fifth circuit, begun and held at the court-rooms thereof, in the city of Galveston, on Monday, the first day of March, A. D. 1886, the Honorable Chauncey B. Sabin, judge, presiding, there came on to be heard the case then pending therein, as follows:

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY and Others. } Law. No. 1352.

And on a day of said term, to wit, on the 12th day of April, A. D. 1886, the said term of said court being continued by regular adjournments down to said last-named day, a final judgment was then and there entered in said case in said court, the said hon. judge then presiding therein, all of which appears of record; and the said defendants, the said James G. Tracy and others, having obtained a writ of error to the Supreme Court of the United States in said case, the record and proceedings therein, including the writ, are as hereinafter set forth, to wit:

4 *Transcript from State Court. Filed Nov'r 2, '85.*

Caption.

STATE OF TEXAS,
*County of Harris.*

At a term of the district court begun and holden at Houston, within and for the county of Harris, before the Hon. James Masterson, on the 5th day of October, A. D. 1885, the following case was filed, to wit:

LOUIS TUFFLY, Assignee, Plaintiff,
*vs.*
JAMES G. TRACY *et al.*, Defendants. } No. 11728.

*Plaintiff's Original Petition. Filed July 3rd, 1885.*

In the District Court of Harris County, Texas, to October Term, 1885.

To the Hon. James Masterson, judge of said court:

The petition of Louis Tuffly, who sues in his capacity as assignee

of the firm of W. T. Tuffly, complaining of James G. Tracy, Timothy H. Scanlan, Henry H. Dooley, and John T. Brady, and also complaining of Samuel K. McIlhenny, William D. Cleveland, W. T. Foley, and Thomas R. Franklin, respectfully shows to the court—

That plaintiff and all of said defendants are resident citizens of the county of Harris, in the State of Texas.

That heretofore, to wit, on the — day of ——, 1884, the
5 said James G. Tracy was appointed to the office of marshal of the United States for the eastern district of Texas by the then President of the United States.

That thereafter, on, to wit, the 7th day of May, 1884, the said James G. Tracy, as principal, and *and* said Timothy H. Scanlan, Henry H. Dooley, and John T. Brady, as sureties, for a valuable consideration, made, executed, and delivered the official bond of the said James G. Tracy as marshal of the United States for the eastern district of Texas; which bond was in writing and in form and substance as follows, viz:

Know all men by these presents that we, James G. Tracy, as principal, and Timothy H. Scanlan, Henry H. Dooley, and John T. Brady, as sureties, all residents of the city of Houston, county of Harris, State of Texas, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand dollars, lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents.

Signed with our hands and sealed with our seals this seventh day of May, in the year one thousand eight hundred and eighty-four.

The condition of the foregoing obligation is such that
6 whereas the President of the United States hath, pursuant to law, appointed the said James G. Tracy to be marshal of the United States, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, for four years from the second day of April, 1884, unless sooner removed therefrom, as by a commission to him bearing date the second day of April, 1884, more fully appears:

Now, if the said James G. Tracy, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise to remain in full force and virtue.

| | | |
|---|---|---|
| (Signed) | JAMES G. TRACY. | [SEAL.] |
| (Signed) | TIMOTHY H. SCANLAN. | [SEAL.] |
| (Signed) | HENRY H. DOOLEY. | [SEAL.] |
| (Signed) | JOHN T. BRADY. | [SEAL.] |

Signed, sealed, and delivered in the presence of—
JAMES W. JONES AND
CHAUNCEY B. SABIN.

That said bond so signed by said Tracy and said sureties was duly approved by the Honorable Chauncey B. Sabin, United States

district judge for the eastern district of Texas, on May 7th, 1884; that on said 7th day of May said Tracy took the oath prescribed by law and entered upon the duties of the office of marshal of the United States for the eastern district of Texas, a certified copy of which will be offered in evidence unless the defendants produce the original bond, which they are notified to do.

7 That heretofore, to wit, on the 23rd day of March, 1885, the firm of W. T. Tuffly, a firm composed of W. T. Tuffly, as general partner, and of C. E. McLin, a *femme sole*, as special partner, conveyed and assigned by due and proper instrument in writing all the property, real and personal, of said firm, as well as all the individual property of said W. T. Tuffly, to plaintiff herein for the benefit of the creditors of said firm, and for the benefit of the individual creditors of said firm, and for the benefit of the individual creditors of said W. T. Tuffly; which assignment is in form and substance as follows, viz:

THE STATE OF TEXAS, }
*County of Harris.* }

Whereas the firm of W. T. Tuffly, composed of W. T. Tuffly, the general partner, and C. E. McLin, as special partner, finding it impossible to pay its debts as they mature, and being desirous to have a distribution of all the property of said firm and the property of the said W. T. Tuffly, partnership — individual, and wishing to avail himself of the provisions of the general assignment law in such cases made and provided, now, therefore, in consideration of the premises and one dollar to me in hand paid, I, W. T. Tuffly, hereby assign and convey and deliver possession of all and singular my property and effects, of whatever name and nature, both per-

8 sonal and real, which I own as copartner and individually and intended to include all property of which or in which I have any interest whatever, wherever the same may be, to Louis Tuffly, as assignee, for the purposes aforesaid, taking possession of the same and sell the same, collect and convert the same, and when so sold, collected, and converted to appropriate the same ratably or in full payment, as the case may be, of all my debts and the debts of the firm of W. T. Tuffly, said assignee to proceed under the law aforesaid. This assignment is intended for the benefit of all such of my creditors only as will consent to accept their proportional share of said property and estate so hereby conveyed and discharge me as aforesaid from their respective claims, said assignee to take lawful compensation for his services herein and expenses and counsel fees necessary to aid him and enable him to carry out the purposes of this conveyance.

Schedules are hereto attached and made as particular as I can do at this time, but in any particular where they may be incorrect or insufficient in detail they will be corrected by me.

In witness whereof I hereunto set my hand, at Houston, this March 23rd, 1885.

(Signed) W. T. TUFFLY.

That there are attached to said deed of assignment exhibits
9 duly sworn to, and said deed of assignment was duly acknowledged before a notary public of the county of Harris, a certified copy of which assignment and schedules will be offered in evidence, of which they are now notified; that the said Louis Tuffly, the assignee named in said deed of assignment, endorsed in writing on the back of said deed his acceptance of said trust, and also made, executed, and delivered his bond as assignee as follows:

THE STATE OF TEXAS, }
*County of Harris.* }

Whereas W. T. Tuffly, on the 23rd day of March, 1885, made an assignment unto Louis Tuffly of all his property and estate for the benefit of all his creditors, individual as well as partnership; and whereas the said Louis Tuffly has accepted said assignment: Now, therefore, we, Louis Tuffly, as principal, and —— ——, as sureties, are bound to the State of Texas — the sum of twenty-seven thousand dollars, lawful money, conditioned that the said Louis Tuffly will faithfully discharge his duties as such assignee, and that he will make proportional distribution of the net proceeds of said estate among the creditors of W. T. Tuffly entitled thereto.

Witness our hands, at Houston, this March 23rd, 1885.

(Signed) LOUIS TUFFLY.
JOHN KRUPP.
S. CONRADI.
W. L. FOLEY.
R. W. CRAWFORD.

10 That said bond of Louis Tuffly, as assignee, was duly approved by the Hon. James Masterson, judge of the 11th judicial district of Texas, on said March 23rd, 1885, and on said day said deed of assignment and bond were duly filed for record in the office of the county clerk of the county of Harris, a certified copy of which bond and of the approval of same will be offered in evidence on the trial, and notice thereof is hereby given defendants; that, having duly qualified as assignee as aforesaid, said Louis Tuffly, on said 23rd day of March, 1885, took unto his possession all the property, real and personal, of said W. T. Tuffly, whether individual or partnership, for the benefit of the creditors of said assignor.

That plaintiff took into his possession, under and by virtue of said assignment, the stock of goods, wares, and merchandise belonging to said firm of W. T. Tuffly, situated in the Burns building, in the city of Houston; also the furniture, shelves, counters, and stationery in said store; that on the 31st day of March, 1885, said James G. Tracy, acting under color of his office as marshal of the United States for the eastern district of Texas, unlawfully, forcibly, and wrongfully seized and took from and out of the possession of plaintiff all of said stock of goods, and all fixtures, shelves,
11 counters, furniture, and stationery in said storehouse, an inventory and list of which is hereto attached, marked Exhibit A, and made part hereof; that the value of each item of said stock

is shown on said inventory opposite same, under column marked value at top of each page; that said exhibit also shows, opposite each item, the New York cost price of same under column marked "cost" at top of each page; that the value placed opposite each item, under the column marked "value" at the top of each page, was the fair and reasonable market value of same at the date of said seizure by said James G. Tracy as aforesaid.

That said Tracy refused at first to seize said goods, when came William D. Cleveland, Samuel K. McIlhenny, William L. Foley, and Thomas R. Franklin and unlawfully encouraged and incited said James G. Tracy to seize and take from the plaintiff said stock of goods; that to induce the said Tracy to seize said stock, furniture, and fixtures, &c., the said Cleveland, McIlhenny, Foley, and Franklin bound themselves in writing to hold him, the said Tracy, harmless against loss by reason of said seizure of said stock of goods, the terms of which obligation and bond of indemnity are not more definitely known and not more fully set forth because the said instrument is in the hands of said defendants, and they are here now notified to produce the same on the trial of this cause, or sec-

12 ondary evidence of its contents will be offered; that the said James G. Tracy, indemnified as aforesaid, seized and converted to his own use said stock of goods, furniture, and fixtures, &c., which was of the value in all, at the date of seizure, of twenty-nine thousand nine hundred and seventy-two & $\frac{22}{100}$ dollars ($29,972.22), in which sum the said James G. Tracy, Samuel K. McIlhenny, William D. Cleveland, W. L. Foley, and Thomas R. Franklin are justly indebted to plaintiff.

That the said Timothy H. Scanlan, Henry H. Dooley, and John T. Brady, as sureties on the official bond of said James G. Tracy, are only bound by said instrument for twenty thousand dollars of said sum; that the said sureties, by reason of the execution and delivery of said bond, undertook, became liable, and promised to pay to plaintiff the sum off twenty thousand dollars.

That the seizure of said stock of goods by the said Tracy, by virtue of the color of his office as marshal, constituted a breach of the conditions of said bond.

The premises considered, plaintiff prays for process to the said James G. Tracy, Timothy H. Scanlan, Henry H. Dooley, John T. Brady, Samuel K. McIlhenny, William D. Cleveland, W. L. Foley, and Thomas R. Franklin, according to law, and on hearing for judg-

13 ment against James G. Tracy, William D. Cleveland, Samuel K. McIlhenny, W. L. Foley, and Thomas R. Franklin for twenty-nine thousand nine hundred and seventy-two dollars and twenty-two cents, and against the other defendants herein, the sureties on the official bond of said Tracy, judgment for twenty thousand dollars of said amount. Plaintiff prays for such other, further, and general relief as to law and equity may appertain; and as in duty bound plaintiff will ever pray, &c.

W. P. HAMBLEN,
W. C. OLIVER,
*Of Counsel for Louis Tuffly, Assignee.*

Filed July 3rd, 1885.

E. H. VASMER,
*Clerk D. C., H. Co.*

*Stipulation in Lieu of Exhibit "A," Accompanying Orig'l Pet'n. Filed June 29, '86.*

Stipulation in lieu of Exhibit "A" accompanying plaintiff's original petition.

Plaintiff filed with his original petition, as Exhibit "A" and part thereof, a full itemized list and inventory of the stock of goods, furniture, fixtures, and other property for the seizure of which this action was brought, giving opposite each item on the list, respectively, the alleged value of the same. As it is very voluminous and its insertion in the transcript would unnecessarily encumber the record, the parties hereto, by their counsel, hereby agree that it shall be omitted therefrom by the clerk in making up the transcript,
and all objection to the transcript on account of such omis-
14 sion is hereby waived; and the clerk is directed to insert in
the transcript, immediately following the original petition, this agreement, which shall be considered by the parties as supplying, in all respects and for all purposes, the place of said Exhibit "A."

Houston, Texas, June 12, 1886.

W. P. HAMBLEN &
W. C. OLIVER,
*For P't'ff.*
C. ANSON JONES,
*Counsel for Defendants.*

The foregoing stipulation endorsed as follows: "No. 1352. Louis Tuffly, assignee, *vs.* James G. Tracy *et al.* Stipulation in lieu of Exhibit "A" to plaintiff's original petition. Filed June 29, 1886. C. Dart, clerk, by W. L. Hanscom, deputy."

*Original Answer of All Def'ts Except Cleveland and Foley. Filed Oct. 10th, 1885.*

In Dist. Court, Harris Co., Texas.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY *et al.* } No. 11728.

Now come the defendants (except defendants Cleveland and Foley, not served) and, for answer, deny all and singular the allegations of the petition, and of this they put themselves upon the country.

F. S. BURKE,
C. ANSON JONES,
*Att'y- for said Def'ts.*

Filed October 10th, 1885.

E. H. VASMER,
*C. D. C., H. Co.*

*Dismissal as to W. D. Cleveland and W. L. Foley.*

LOUIS TUFFLY, Assignee,
*vs.*
J. G. TRACY *et al.*
No. 11728.

Plaintiff dismisses as to W. D. Cleveland and W. L. Foley, defendants, not served.

15 *Petition for Removal to U. S. Court. Filed Oct. 19th, 1885.*

In the District Court of Harris County, Texas.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY *et al.*
No. 11728.

To the hon. district court of Harris county:

Your petitioners, James G. Tracy and the sureties on his bond as United States marshal, T. H. Scanlan, H. H. Dooley, and John T. Brady, respectfully show to the court that the plaintiff in the above cause, Louis Tuffly, and your petitioners all reside in Harris county, Texas, except J. G. Tracy, who resides in Galveston county, Texas, and that they are all citizens of the State of Texas; that the matter and amount in dispute in the above styled and numbered cause exceeds, exclusive of costs, the sum or value of five hundred dollars, and that petitioners are defendants in said cause; that said suit is one arising under the laws of the United States, in this: The plaintiff, Louis Tuffly, sues the said James G. Tracy, as principal, and the said Scanlan, Dooley, and Brady, as sureties on the official bond of said Tracy as marshal of the United States for the eastern district of Texas, for an alleged trespass in seizing and taking into his possession under color of his office certain goods, wares, and merchandise and other property, and said suit is a suit on said marshal's bond as such marshal; that at the time of said alleged trespass and
16 at the date of the institution of this suit, on July 3rd, 1885, said Tracy was the duly appointed, qualified, and acting marshal of the United States in and for said district, and the other petitioners herein, Scanlan, Dooley, and Brady, were the sureties on his official bond as such marshal; that at the time of the seizure of said property the said Tracy was duly acting in his official capacity under and by virtue of three certain writs of attachment issued out of the circuit court of the United States for the eastern district of Texas, at Galveston, in favor, respectively, of George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co.; James H. Dunham, William Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon & Co., and all against W. T. Tuffly, who resided in Houston, Harris county, Texas;

that said attachments were duly issued out of said court, directed to and placed in the hands of said J. G. Tracy, as United States marshal, and by virtue of the same the said property was duly levied upon by him as the property of said W. T. Tuffly; and petitioners claim that said property was, at the time of said seizure, the property of said W. T. Tuffly and liable to attachment for his debts, and that said Louis Tuffly had no lawful right or interest therein.

That the defence of your petitioners arises under and in-
17 volves the construction of the laws of the United States.

That petitioners deny their liability upon said bond as sued and justify the said alleged trespass under the authority of the said United States circuit court and the laws of the United States; that said suit was brought to this term of this court, and that this is the first term of the court at which said cause could be legally tried, and that the same has not been heard or tried, and that the defendants therein desire to remove the same for trial to the circuit court of the United States in and for the eastern district of Texas; that petitioners make and offer herewith a bond with good and sufficient security for their entering in said circuit court of the United States in and for the eastern of Texas, on the first day of its next session, a copy of the record in this suit, and for their appearing in said suit and for paying all costs that may be awarded by the said circuit court if the said court shall hold that this suit was wrongfully or improperly removed thereto.

Petitioners pray this honorable court to proceed no further in said cause except to make the order of removal required by law and now prayed for, and to accept the said bond and surety, and to cause the record herein to be removed into said circuit court of the United States for the eastern district of Texas, at Galveston, and for
18 such other orders as may be requisite to that end; and petitioners will ever pray, &c.

JAMES G. TRACY,
T. H. SCANLAN,
H. H. DOOLEY,
JOHN T. BRADY,
By FRANK S. BURKE &
C. ANSON JONES,
*Attorneys for said Petitioners.*

James G. Tracy, being duly sworn, states that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof, and that the allegations therein made are true.

JAMES G. TRACY.

Subscribed and sworn to before me, as witness my hand and seal of office, at Galveston, this 15th day of October, A. D. 1885.

[SEAL.] R. T. BYRNE,
*Notary Public for Galveston County, Texas.*

Filed October 19th, 1885.

E. H. VASME, *C. D. C., H. Co.*

*Bond for Removal. Filed Oct. 19th, 1885.*

In the District Court of Harris County, Texas.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY *et al.* } No. 11728.

Know all men by these presents that we, James G. Tracy, T. H. Scanlan, H. H. Dooley, and John T. Brady, as principals, and J. L. Mitchell and W. L. Foley, as sureties, are held and firmly bound unto Louis Tuffly, and unto whomsoever it may concern, in
19 the sum of five hundred dollars, payment whereof, well and truly to be made, we bind ourselves, our heirs and legal representatives, jointly and severally, firmly by these presents. The condition of the foregoing obligation is such that whereas the said James G. Tracy, F. H. Scanlan, H. H. Dooley, and John T. Brady have petitioned the district court of the State of Texas in and for Harris county for the removal of a certain cause therein pending, wherein said Louis Tuffly is plaintiff and the said James G. Tracy, T. H. Scanlan, H. H. Dooley, and John T. Brady and others are defendants, to the circuit court of the United States in and for the eastern district of Texas: Now, if the said James G. Tracy, T. H. Scanlan, H. H. Dooley, and John T. Brady shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall then and there appear in said suit, then this obligation to be void; otherwise to be in full force and virtue.

Witness our hands and seals this 15th day of October, 1885.

J. G. TRACY,
T. H. SCANLAN,
H. H. DOOLEY,
JOHN T. BRADY,
20 J. L. MITCHELL,
W. L. FOLEY,
By FRANK S. BURKE &
C. ANSON JONES,
*Their Attorneys.*

Filed October 19th, 1885.

E. H. VASMER, *C. D. C., H. Co.*

*Order of Removal to U. S. Circ't Court.*

L. TUFFLY, Assignee,
*vs.*
J. G. TRACY *et al.* } No. 11728.

On this 19th day of October, 1885, came on to be heard the peti-

tion of James G. Tracy, T. H. Scanlan, H. H. Dooley, and John T. Brady, filed herein, to remove this cause into the circuit court of the United States, and the parties appeared, by their attorneys; and, no objection being made to said petition, and no cause being shown why the same should not be granted, and the court having heard the same and being satisfied that the facts stated as ground for removal are true, and said petitioners having filed with their said petition a bond with sufficient security for such removal, conditioned as required by law, it was, upon motion of said petitioners' counsel, ordered that said petition, bond, and security be accepted, and that this court proceed no further herein, and that this cause be transferred and removed into the circuit court of the United States for the eastern district of Texas, in the fifth circuit, holding sessions at Galveston, Texas, and that the clerk of this court prepare a certified copy of the record herein and deliver the same to said petitioners or their counsel upon being paid his legal fees therefor.

21

THE STATE OF TEXAS, }
*County of Harris.* }

I, E. H. Vasmer, clerk district court, Harris county, Texas, do hereby certify that the foregoing pages contain a full, true, and correct record of all the proceedings had in that certain cause wherein Louis Tuffly, assignee, is plaintiff and J. G. Tracy *et al.* are defendants, as the same appears of record and on file in my office, at Houston, Texas.

Witness my hand and the seal of this court this 29th day of October, 1885.

[SEAL.]

E. H. VASMER,
*Clerk D. C., H. Co.*

Endorsements on transcript from State court:

"C. L. 1352. Transferred from Harris district court to the United States circuit court, E. dist. of Texas. 11728. L. Tuffly, ass'e, *vs.* J. G. Tracy *et al.* Called for by C. A. Jones, d'f'ts' att'y, on Oct. 19th, 1885, and delivered to C. A. Jones, def'ts' att'y, on Oct. 30th, 1885. E. H. Vasmer. Filed Nov'r 2d, 1885. C. Dart, clerk. C. L., 1352."

*Leave to P't'ff to Amend. Nov.* 6, 1885.

From Minutes of U. S. Circuit Court, page 134, Vol. 5, Nov'r 6, 1885.

LOUIS TUFFLY, Assignee, }
*vs.* } 1352.
JAMES G. TRACY *et al.* }

Upon application, leave is given to the pl't'ff to amend.

22 *Leave to Def'ts to Amend. Nov.* 6, 1885.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY *et al.* } 1352.

Upon application, leave is given the def'ts to amend.

23 *First Amended Original Answer. Filed Nov.* 6, '85.

In the Circuit Court of the United States, Eastern District of Texas, at Galveston.

LOUIS TUFFLY, Ass'ee,
*v.*
JAMES G. TRACY *et al.* } No. 1352.

Now come the defendants herein (except the defendants W. L. Foley and W. D. Cleveland, not served) and, having first obtained leave of the court for that purpose, file this their first amended original answer in lieu of their original answer filed herein, in the district court of Harris county, on the 10th day of October, 1885, and demur to plaintiff's petition and say that plaintiff's said petition herein and the matters and things therein contained are not sufficient in law to entitle plaintiff to have and maintain his said action against them; and of this they pray the judgment of the court.

And said defendants specially except and demur to plaintiff's said petition and say the same is insufficient in law—

I. Because said petition shows that the alleged firm of W. T. Tuffly was composed of two copartners, to wit, W. T. Tuffly and C. E. McLin, and it nowhere shows that the copartner C. E.
24 McLin agreed to and joined in the execution of the said alleged assignment; but, on the contrary, shows that the said C. E. McLin did not join in and sign the said alleged assignment, and gives no sufficient reason, and indeed no reason whatever, why said C. E. McLin did not join in the said assignment.

II. Because the alleged assignment set out in the petition is insufficient, illegal, and void, because the same is signed only by one of the copartners, to wit, W. T. Tuffly, and because the same is made, as shown by its terms, for the benefit of such of W. T. Tuffly's creditors only as will consent to accept their proportional share of the property conveyed and discharge him from their respective claims, and does not include within its provisions and benefits the creditors of himself as copartner of the alleged firm of W. T. Tuffly, and because it does not purport or attempt to convey the entire partnership property of the firm, but only the individual property of said Tuffly and his property as a copartner of the alleged firm of W. T. Tuffly.

III. If the alleged assignment set out in the petition can be construed and is construed to be for the benefit of the creditors of the

alleged firm of W. T. Tuffly as well as the individual cred-
25 itors of said Tuffly, then defendants specially except to said petition because it shows that said alleged assignment is illegal & void; because it shows on its face that it is for the benefit only of such creditors as will accept their proportional share of the property conveyed, whereas it only attempts and purports to convey the property of said Tuffly which he owns as copartner or individually, and does not convey the property of the firm of W. T. Tuffly.

IV. Because said alleged assignment set forth in the petition by its terms unlawfully delays and hinders the creditors of the assignor in this: it provides that the assignee is only to apply the proceeds of the property conveyed, ratably or otherwise, to the payment of the debts when he shall have sold, collected, and converted the entire property conveyed to him, whereas the law provides that an assignee shall make *pro rata* distribution whenever he shall have in his hands funds sufficient to pay ten per cent. of the debts due by the assignor.

V. Because said alleged assignment is illegal and void, because it by its terms admits the individual creditors of W. T. Tuffly to an equal participation with partnership creditors in the proceeds
26 of the partnership property, and thereby gives them an unlawful preference over the creditors of the partnership.

VI. Because the petition does not show that any of the creditors of said W. T. Tuffly have consented to or accepted the terms of said alleged assignment and does not show the amount or value of the claims of such creditors.

VII. Defendants Scanlan, Dooley, Brady, and Tracy demur to said petition because it does not set forth with sufficient particularity how the defendant Tracy acted as United States marshal, nor that he acted under any process of court, nor state what process, and does not therefore set forth such state of facts as would entitle the plaintiff to a recovery on the bond of said Tracy as marshal, and of all the foregoing demurrers the defendants pray the judgment of the court.

FRANK S. BURKE,
C. ANSON JONES,
*Att'ys for said Defendants.*

And if required to answer hereto these defendants deny all and singular the allegations of the petition, and of this they put themselves upon the country; and, for further answer herein, said
27 defendants say that at the time of the seizure and for several months prior thereto and thereafter until about August 1, 1885, defendant Tracy was the duly appointed, qualified, and acting marshal of the United States in and for the eastern district of Texas, and defendants Scanlan, Dooley, and Brady are the sureties on his official bond as such marshal; that theretofore, to wit, on or about the 31st day of March, 1885, George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., filed suit against said W. T. Tuffly in the circuit court of the United States for the eastern district of Texas, holding sessions at Galveston, for the

sum of about eight thousand eight hundred and twenty-one & $\frac{13}{100}$ dollars, and J. H. Dunham, William F. Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., filed suit against said W. T. Tuffly in said court for the sum of about one thousand and seven & $\frac{93}{100}$ dollars, and William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon & Co., filed suit against said W. T. Tuffiy in said court for the sum of about twelve hundred and seventy-nine & $\frac{58}{100}$ dollars; that on the same day said plaintiffs procured and caused to be issued out of said court writs of attachment in their favor,
28 respectively, in each of said three suits for the sums therein set forth. Said writs were duly and lawfully issued, and were directed to the United States marshal for the eastern district of Texas, and commanded him to attach so much of the property of said W. T. Tuffly as should be sufficient to make the amounts therein specified and the probable costs of suit; that said writs were placed in the hands of the defendant Tracy as marshal as aforesaid. Defendants Samuel K. McIlhenny and Thomas R. Franklin say that, at the request of said plaintiffs in attachment, they signed as sureties certain bonds of indemnity given by said plaintiffs to the marshal, and they had no other or further connection with the seizure complained of.

That thereafter and on the same day defendant Tracy, acting as marshal as aforesaid, and by authority of the said writs and in obedience to them, seized certain property of the said W. T. Tuffly, consisting of goods, wares, and merchandise and store fixtures, in the store then occupied by and in possession of said Tuffly, on the corner of Main and Prairie streets, in the city of Houston, Harris county, Texas, and afterwards, under the order of the circuit
29 court, from which said writs issued, sold the said personal property and paid the proceeds into the registry of the court; and defendants justify said seizure and sale under the process and orders aforesaid, and say that plaintiff ought not to have and maintain his said action against them, because they say that at the time of the filing of said suits and levy of attachment the said *said* copartnership of W. T. Tuffly was justly indebted unto the said plaintiffs in attachment in the several sums claimed by them, and is now so indebted, and that the said property so attached was in law the property of said W. T. Tuffly at the time of said seizure and levy of attachment, and was liable for his debts. Defendants say that the said W. T. Tuffly and C. E. McLin were, at the time of said seizure and long prior thereto, general partners under the firm name of W. T. Tuffly, and deny that they ever complied with the provisions of the law prescribed for the formation of special partnerships, and that if they did so comply, which is denied, that the capital stock of the said C. E. McLin was unlawfully reduced after the formation of the partnership below the amount required to be kept by her in the partnership, and they deny that the necessary notice of the formation of said partnership was given, as required by law.
30 And they say that said pretended assignment set forth by plaintiff in his petition, if the same was ever executed by said

W. T. Tuffly, was not made in contemplation of insolvency, and that said firm was not insolvent at the time it was made; that said C. E. McLin is a sister of said W. T. Tuffly, and that the pretended assignee herein, Louis Tuffly, is their cousin, and also claims to be a creditor of the said firm of W. T. Tuffly; that C. E. McLin also claims an indebtedness in her favor from W. T. Tuffly, alleged to have accrued after the formation of their partnership, of several thousand dollars, and that said pretended assignment was contrived and executed in pursuance of a fraudulent understanding between said W. T. Tuffly and said Louis Tuffly to protect and pay the said pretended debts to C. E. McLin & Louis Tuffly, and with the intent of hindering, delaying, or defrauding the said plaintiffs in attachment and the other creditors of said W. T. Tuffly, and seeks to unlawfully prefer the debt of the said C. E. McLin and to allow her to participate in the benefits of said pretended assignment, and that
31 the said C. E. McLin was at the time of said assignment the owner of property in her individual right, but that she wholly failed to convey the same or her partnership property by said pretended assignment. Wherefore defendants say that said pretended assignment is void and of no effect, and they pray judgment for their costs.

Defendants say that of the alleged indebtedness of said Tuffly, as set forth in his pretended assignment, seven hundred and fifty dollars in amount is secured by pledge of stock of equal value thereto, and that as to that amount plaintiff ought not to have and recover of them.

Defendants further allege that at the date of said seizure the said Tuffly was indebted unto Hugh Burns for rent of the store in which his said goods were kept in the sum of seven hundred & fifty dollars, and that said Burns had a valid landlord's lien on the goods seized by said marshal for said sum, which amount the said Tracy and the plaintiffs in attachment caused to be paid off and discharged, and these defendants plead the same here in offset against plaintiff's demand should it be held that he is entitled to recover.

FRANK S. BURKE,
C. ANSON JONES,
*Attorneys for said Defendants.*

32 Indorsements: #1352, C. L. Louis Tuffly, ass'ee, *vs.* James G. Tracy *et al.* First amended original answer. Filed Nov. 6, '85. C. Dart, clerk."

*Amended Petition and Replication. Filed Nov.* 17, 1885.

HOUSTON, *Nov.* 23*rd*, 1885.

Mr. C. Dart, clerk, &c., Galveston.

DEAR SIR: Enclosed I send you list of claims, &c. It is referred to in our amendment filed when we were there last week, and is to

be an exhibit thereto. Do me the kindness to pin it onto that amendment, and greatly oblige,

Your friend, HAMBLEN.

| | |
|---|---|
| J. R. Morris (Houston, Tex.) | 500 00 |
| Trojan Shirt & Collar Co. (N. Y.) | 76 00 |
| McIlheny & Co., Houston, Tex. | 88 67 |
| G. W. Baldwin, " " | 4 05 |
| Teft, Weller & Co. (New York) | 771 32 |
| P. J. Willis & Bro. (Galveston, Tex.) | 1,135 51 |
| W. P. Archer (Houston, Texas) | 282 90 |
| C. J. Wright, Houston, " | 200 00 |
| Joe Schwander, " " | 49 90 |
| E. Tuffts, " " | 24 85 |
| Krupp & Tuffly, " " | 500 00 |
| New Bramfels Man'f'g Co. (New Bramfels) | 259 00 |
| Wm. Dissen, Houston | 54 45 |
| 33 Cook & Valentine, New York | 97 32 |
| H'y Chamock (New Orleans, La.) | 432 60 |
| C. L. Woodbridge & Co. (New York) | 110 18 |
| A. C. Mather & Co., Chicago | 21 00 |
| New York Collar Co., N. York | 26 33 |
| Mattie Simmons (Galveston) | 505 00 |
| H. B. Claflin & Co., New York | 639 15 |
| Max Judd & Co., St. Louis | 619 60 |
| Mrs. Lizzie Justice, Houston | 26 17 |
| Eugene Rhodes, " | 22 50 |
| Rosenheim, Levis & Co., St. Louis | 125 60 |
| Quaker City Shirt Co., New York | 102 00 |
| Browning & Coyle (St. Louis, Mo.) | 74 60 |
| Thompson, Langdon & Co., New York | 144 79 |
| S. O. Cotton & Bro., Houston | 13 91 |
| Chas. C. Carpenter, New York | 14 40 |
| Wm. O. Headly & Son, New York | 75 58 |
| Warner Bros., New York | 67 09 |
| Geo. Bastian, Houston | 51 79 |

A.

The undersigned, creditors of the late firm of R. W. McLin & Company, in consideration of the assumption of all the indebtedness of said late firm by the firm of W. T. Tuffly, composed of W. T. Tuffly, general, and Christina E. McLin, special, partner, as appears by the certificate by the- signed, hereby release the estate of R. W. McLin, deceased, from any and all liability on account of the obligations of said firm of R. W. McLin & Co., either by note or open account or otherwise.

34 Houston, April 24th, 1884.

MORRISON, HERRIMAN & CO.,
By A. WILSON.
DUNHAM, BUCKLEY & CO.,
By A. WILSON.
TEFFT, WELLER & CO.,
By ANDREW WILSON.
W. H. LYONS & CO.,
By ANDREW WILSON.
WHITFIELD, POWERS & CO.,
By ANDREW WILSON.
MILLS & GIBB,
By ANDREW WILSON.
WM. O. HEADLEY & SON,
By ANDREW WILSON.
HALSTEAD, HAINES & CO.,
By ANDREW WILSON.
P. J. WILLIS & BRO.,
By ANDREW WILSON.
WM. E. BURLOCK & CO.,
By ANDREW WILSON.
WM. A. DROWN & CO.,
By ANDREW WILSON.
ROSENHEIM, LEVIS & CO.,
By ANDREW WILSON.
THOS. RUSSELL & CO.,
By ANDREW WILSON.
L. V. HOLTZMARSTER,
By ANDREW WILSON.
FRANKENTHAL BROS.,
By ANDREW WILSON.
MAX JUDD & CO.,
By ANDREW WILSON.

4, 13, 1884.

Dated New York, 12.

To Andrew Wilson, T. W. House:

Add Burlock, Thomas Russell, Frankenthal, Holzmaister, Drounmore Monday.

MORRISON, HERRIMAN & CO.

Gulf, Colorado & Santa Fé R'y Telegraph.

Dated Galveston, April 11, 1884.
Received at 12.40 p. m.

To Andrew Wilson, care R. W. McLin & Co.:

35 We want you to act for us as for yourself, and will be glad to confer with you any time

P. J. WILLIS & BRO.

20; paid; 45.

Morrison, Herriman & Co., 503 & 505 Broadway.

P. O. box 198. NEW YORK, *Ap'l 7th*, 1884.

We hereby authorize Andrew Wilson to represent our claims in the investigation and adjustment of the affairs of R. W. McLin & Co.

Houston, Texas.

MORRISON, HERRIMAN & CO.
DUNHAM, BUCKLEY & CO.
TEFFT, WELLER & CO.
HALSTEAD, HAINES & CO.
MILLS & GIBB,
By M. EVANS, *Att'y.*
WM. H. LYON & CO.
WHITFIELD, POWERS & CO.
WM. O. HEADLEY & SON,
By HENRY C. ALBERT, *Att'y.*
ROSENHEIM, LEVIS & CO.
MAX JUDD & CO.

In United States Circuit Court, Eastern District.

LOUIS TUFFLY, Assignee, *vs.* JAMES G. TRACY *et al.* } No. 1352.

And now comes the plaintiff, with leave of the court, and
36 amends his original petition in this cause and, by — of amendment as well as by way of replication to the defendants' amended original answer herein, says and alleges that the said defendants are estopped from alleging anything against the partnership of W. T. Tuffly, as general partner, and C. E. McLin, as special partner, or in any manner setting up the matter of said special partnership as a defence, and are estopped from alleging or claiming that the said C. E. McLin was a general partner in said firm, because plaintiff alleges and avers that *the* all of the said plaintiffs in said causes in this court, wherein the writs of attachment were sued out by plaintiffs and issued and levied upon the goods, wares, and merchandise of said plaintiff, as assignee of W. T. Tuffly, by the defendant, J. G. Tracy, to wit, Morrison, Herriman & Co.; Dunham, Buckley & Co., & William H. Lyon & Co. *vs.* W. T. Tuffly, in said several suits, as alleged by defendants in their said amended answer, had full and ample notice of said special partnership, acquiesced therein and assented to the same, and dealt with the same from and after the 24th day of April, 1884, as will most fully appear by the instrument in writing, hereto attached, marked A, and made part hereof, dated on the said 24th day of April, 1884, and signed by the said several parties, among others, by their duly authorized agent, Andrew
37 Wilson; and plaintiff further avers that after the said date the parties aforesaid, well knowing the existence of said special partnership, by their acts gave the said special partnership

standing and credit and induced a great many other parties to give credit of large sums of money up to the date of the assignment set up in this cause, and for whose benefit said assignment was made; and plaintiff further avers that all of the creditors of said firm of W. T. Tuffly, except the said several plaintiffs in said causes in which said writs of attachment were sued out, issued, and levied on said goods, wares, & merchandise, have accepted of and proved their said several claims under said deed of assignment and are now awaiting payment of the same by plaintiff, as assignee of said W. T. Tuffly, a list of which creditors so accepting will be attached hereto and shown to the court on the trial as part hereof; and said plaintiff further avers that there was no fraud in said assignment, and he denies all fraud or fraudulent intent in the execution of said assignment for the benefit of the creditors of W. T. Tuffly, as shown by and averred in his original petition; on the contrary, the same was executed in good faith and with no other intent than to properly distribute the estate of said firm of W. T. Tuffly among its creditors; and plaintiff denies that the amount of contribution of said special partner was
38 ever in any manner reduced or intended to be reduced or diverted from said copartnership.

All of which pl'ff is ready to verify.

W. C. OLIVER,
W. P. HAMBLEN,
*Att'ys for Pl'ff.*

Indorsements: "1352. Louis Tuffly, ass'n., *vs.* J. G. Tracy *et al.* Amended pet'n & replication. Filed Nov. 17th, 1885. C. Dart, clerk."

*Leave Granted Geo. A. Morrison et al. to Make Themselves Parties Defendant.*

Order from Minutes, December 10, 1885.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY & Others. } 1352.

Upon application and for cause shown, it is ordered that the following-named parties have leave to make themselves parties defendant herein, to wit: George A. Morrison and John Herriman, partners under the firm name of Morrison, Herriman & Co.; J. H. Dunham, William F. Buckley, and Charles H. Webb, partners under the firm name of Dunham, Buckley & Co.; and Wm. H. Lyon, James O. Carpenter, and Joseph H. T. Martin, partners under the firm name of William H. Lyon & Co.; to which order the plaintiff excepted.

39 *Appearance of Morrison, Herriman & Co.; Dunham, Buckley & Co., & Wm. H. Lyon & Co. as Defendants. Filed Dec.* 10, 1885.

In the Circuit Court of the U. S., at Galveston, Eastern Dist. of Texas.

LOUIS TUFFLY, Ass'ee,
*v.*
JAMES G. TRACY *et al.* } No. 1352.

Now come George A. Morrison and John Herriman, partners under the firm name of Morrison, Herriman & Co.; J. H. Dunham, William F. Buckley, and Charles H. Webb, partners under the firm name of Dunham, Buckley & Co.; and William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, partners under the firm name of William H. Lyon & Co., and, with leave of the court, appear herein and say that they are the creditors referred to in the amended answer filed herein on the — day of November, 1885, who caused the writs of attachment to be issued, as therein set out, and principals on the bond of indemnity referred to in the plaintiff's petition, and they make themselves parties defendant in this cause and adopt as their own the demurrers, pleas, and answers of their codefendants herein, and say the same constitute their answer herein.

C. ANSON JONES,
*Att'y for said Defendants.*

Endorsed: "1352. Louis Tuffly, ass'ee, *v.* James G. Tracy *et al.* Appearance of Morrison, Herriman & Co.; Dunham, Buckley & Co., & Wm. H. Lyon & Co. as defendants. Filed Dec. 10, 1885. C. Dart, clerk."

40 *Plaintiff's Exceptions to Answer. Filed Dec.* 10, 1885.

In Circ't Court United States.

LOUIS TUFFLY, Ass.,
*vs.*
J. G. TRACY *et al.* } 1352.

Now come plaintiffs and except- and demur- to defendants answer in so far as the same sets up fraud in the assignment between the assignee and assignor, because same constitutes no defense in law to this action.

W. P. HAMBLEN & W. C. OLIVER,
*Att'ys for Pl'ff.*

Endorsed: "1352. Louis Tuffly, ass'n., *vs.* J. G. Tracy. Exceptions to the answer. Filed Dec'r 10, 1885. C. Dart, clerk."

*Continuance to Enable Def't- to Make Cleveland et al. Parties.* Dec. 10, '85.

Order from Minutes.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY and Others. } 1352.

Upon application of the defendant James G. Tracy, supported by his affidavit, it is ordered that this case be continued to enable the said defendant James G. Tracy to make W. D. Cleveland, W. L. Foley, C. Lombardi, and John Kennedy, sureties on his indemnity bonds, parties hereto, and leave given defendant Tracy to file proper paper or papers to make sureties above named on his in-
41 demnity bonds parties hereto, and upon the filing of which all necessary process will issue.

*Amended Answer of James G. Tracy.* *Filed April* 6, 1886.

In Circuit Court of the United States, at Galveston, Texas.

LOUIS TUFFLY, Ass'ee,
*vs.*
JAS. G. TRACY. } 1352.

Now comes the defendant, James G. Tracy, and, with leave of the court, amends his answer herein, and shows that for his indemnification against all damages which might be recovered against him on account of the levy of the writs of attachment described in the pleadings herein, the several attaching creditors and his codefendants herein made and delivered to him their certain indemnity bonds, payable to him, and conditioned in substance to indemnify him against all damages which might be recovered against him on account of said levies; said bonds were executed by the respective parties at the dates and for the amounts hereinafter set forth, to wit: By Geo. A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., March 31, 1885, in the sum of nineteen thousand dollars, with Wm. D. Cleveland, C. Lombardi, and S. K. McIlhenny, as sureties; by J. H. Dunham, Wm. F. Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co.,
42 March 28, 1885, in the sum of twenty-five hundred dollars, with W. L. Foley and John Kennedy, as sureties; by Wm. H. Lyon, James O. Carpenter, and Jos. H. T. Martin, composing the firm of Wm. H. Lyon & Co., March 31, 1885, in the sum of twenty-six hundred dollars, with W. L. Foley and Thos. R. Franklin, as sureties, and he now makes them parties hereto, and prays that in the event of judgment against him herein that he may have judgment over against the said principals and sureties on said bonds for

the same, and that execution be ordered to issue first against them, and for general relief.

JAMES G. TRACY.

Endorsed: "C. L., 1352. Louis Tuffly, ass'ee, *vs.* James G. Tracy *et al.* Amended answer of James G. Tracy. Filed Ap'l 6th, 1886. C. Dart, clerk."

*W. L. Foley, Jno. Kennedy, W. D. Cleveland, & C. Lombardi Make Themselves Parties and Adopt Answers. Filed April* 6, 1886.

In Circuit Court of U. S., at Galveston.

LOUIS TUFFLY, Ass'ee,
*v.*
J. G. TRACY *et al.* } No. 1352.

Now come W. L. Foley, John Kennedy, W. D. Cleveland, and C. Lombardi and make themselves parties defendant herein, and
43 join in and adopt as their own all and singular the demurrers, exceptions, and pleas of their codefendants herein; and say they constitute their defense hereto.

C. ANSON JONES,
*Att'y for said Parties.*

Endorsed: "C. L., 1352. Louis Tuffly, assignee, *v.* Jas. G. Tracy *et al.* W. L. Foley, John Kennedy, W. D. Cleveland, and C. Lombardi make themselves parties defendants and adopt answers. Filed Ap'l 6, 1886. C. Dart, clerk."

*March Term, April* 7, 1886, *Trial Begun.*

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY and Others. } 1352.

On this 7th day of April, 1886, came the parties to this suit, by their attorneys, and both parties announcing ready and the issues being joined, thereupon came a jury of twelve good and lawful men, who were duly elected, tried, empaneled, and sworn and accepted by the parties as a good and lawful jury to try the issues between them in this suit, to wit: M. A. Quinn, J. M. Abernathy, R. A. Milam, Zack Williams, Joseph Weir, J. N. Stowe, W. H. Clary, Paul Shean, A. Kenison, Hannibal Noble, G. E. Clothier, and J. G. Ashford.

Ordered, That the further consideration of the case be postponed until to-morrow.

44 *Trial Continued, April* 8, 1886.

From Minutes, March Term, April 8, 1886.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY *et al.* } 1352.

On this day again came the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed before the court and jury. Then came on to be heard the defendants' exceptions to the plaintiff's petition, and were argued by counsel; and the court having duly considered the said exceptions, and it appearing that the law is for the plaintiff, it is ordered that the said exceptions be overruled; to which ruling of the court the defendants excepted. Then came on to be heard the plaintiff's exceptions to the defendants' answer, and the same being argued, and the court being sufficiently advised, it is ordered that the plaintiff's exceptions to the defendants' answer as to allegations of fraud between assignor and assignee be sustained; to which ruling of the court the defendants again excepted; and thereupon the trial of the case proceeded, but the same not being concluded the further consideration of the case was postponed until to-morrow.

*Further Hearing, April* 9, 1886.

(From Minutes.)

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY and Others. } 1352.

45 On this day again came the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed before the court and jury, but the trial not being concluded the further consideration of the case was postponed until to-morrow.

*Further Hearing, April* 10, 1886.

From Minutes, April 10, 1886.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY and Others. } 1352.

On this day again came the parties to this suit, by their attorneys, and thereupon the trial of the case was resumed before the court and jury, but the trial not being concluded the further consideration of the case was postponed until Monday next.

*Verdict and Judgment, April* 12, 1886.

From Minutes, March Term, April 12, 1886.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY and Others. } No. 1352.

On this 12th day of April, 1886, again came the parties to this suit, by their attorneys, and the jurors aforesaid, duly elected, tried, impaneled, and sworn in this case and accepted by the parties as a good and lawful jury to try the issues between them in this suit, to wit, Alphonse Kenison and eleven others, having heard the pleadings and the evidence and argument of counsel, and having
46 received the charge of the court, retired to consider of their verdict, and after due deliberation the jurors aforesaid returned into court and returned their verdict as follows:

"We, the jury, find for the plaintiff, Louis Tuffly, as assignee, against the defendant-, James G. Tracy, Timothy H. Scanlan, Henry H. Dooley, and John T. Brady, sureties upon his official bond, and Morrison, Herriman & Co., Dunham, Buckley & Co., and Wm. H. Lyon & Co., attaching creditors, the sum of seventeen thousand dollars ($17,000.00) for his damage herein; and we, the jury, also further find in favor of the defendant, James G. Tracy, upon the indemnity bonds given him, as follows, viz:

We find for him against the defendants, Dunham, Buckley & Co., and W. L. Foley and John Kennedy, their sureties, the sum of twenty-five hundred dollars ($2,500.00).

And against the defendants, Wm. H. Lyon & Co., and W. L. Foley and Thos. R. Franklin, their sureties, the sum of twenty-six hundred dollars ($2,600.00).

And against the defendants, Morrison, Herriman & Co., and Wm. D. Cleveland, C. Lombardi, and S. K. McIlhenny, their sureties, the sum of seventeen thousand dollars ($17,000.00), which said several amounts in favor of the said James G. Tracy we find as indemnity against damage found herein for taking the property of plaintiff herein.

ALPHONSE KENISON, *Foreman.*"

47 Wherefore it is considered by the court and so ordered, adjudged, and decreed that the plaintiff herein, Louis Tuffly, as assignee of the firm of W. T. Tuffly, do have and recover of and from the defendants herein, to wit, James G. Tracy, and Timothy H. Scanlan, Henry H. Dooley, and John T. Brady, sureties upon his official bond as marshal of the United States for the eastern district of Texas; George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., and said firm; James H. Dunham, William Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and said firm, and Wm. H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of Wil-

liam H. Lyon and Company, and said firm, the said sum of seventeen thousand dollars ($17,000.00), as by the jury aforesaid assessed, with interest thereon, at the rate of eight per cent. per annum, from this date until paid, and also all costs about this suit incurred, and have execution therefor.

It is further considered by the court and so ordered, adjudged, and decreed that the defendant herein, James G. Tracy, do have and recover upon the indemnity bonds given him as indemnity against damage found herein for taking the property of plaintiff herein as follows, viz: Of James H. Dunham, William
48 Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and of said firm, and W. L. Foley and John Kennedy, their sureties, the sum of twenty-five hundred dollars ($2,500.00), with interest thereon as aforesaid, and all costs of suit; of William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon and Company, and of said firm, and W. L. Foley and Thomas R. Franklin, their sureties, the sum of twenty-six hundred dollars ($2,600.00), with interest thereon as aforesaid, and all costs of suit, and of George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., and of said firm, and Wm. D. Cleveland, C. Lombardi, and S. K. McIlhenny, their sureties, the sum of seventeen thousand dollars ($17,000.00), with interest thereon as aforesaid, also all costs by him in this behalf sustained, and have execution against said defendants and their said sureties for the said several sums, interest, and costs, but the whole amount to be collected as indemnity to the said James G. Tracy for his damage found herein shall not exceed the said sum of seventeen thousand dollars ($17,000.00), with interest thereon as aforesaid, and all costs of suit.

To which verdict of the jury and the judgment rendered thereon the defendants, by their counsel, in open court excepted, and asked that the same may be noted on the record, which is accordingly done.

49 *Def'ts' Motion for New Trial. Filed Ap'l* 13, '86.

In Circuit Court, Eastern District of Texas, at Galveston.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY *et al.* } No. 1352.

Now come the defendants in the above numbered and entitled cause and move the court to set aside the verdict and judgment rendered against them in this cause and to grant them a new trial of said cause for the following reasons, to wit:

1. The court erred in overruling the general demurrer of defendants to the plantiff's pleadings herein.

2. The court erred in each and all of its rulings in overruling defendants' special demurrers numbers 1, 2, 3, 4, 5, 6, & 7 to plaintiff's pleadings herein, and this motion being several and distinct as to

each of said rulings and not general or applying to any two or more of them.

3. The court erred in admitting in evidence the deed of assignment from W. T. Tuffly to Louis Tuffly over defendants' objections thereto, and in overruling defendants' objections thereto, made on the ground that it showed on its face that Mrs. C. E. McLin was a partner in the firm of W. T. Tuffly, and that she was scheduled as a creditor of the assignor, and that the assignment thereby allowed her to participate in the benefits of the assignment, and
50 thereby reserved a benefit to one of the partners and gave her an unlawful preference over creditors, as shown by bill of exceptions.

4. Because the court erred in overruling defendants' objections to the original notice of formation of special partnership, published in the Houston Journal, bearing date April 25, 1884, & signed by W. T. Tuffly and Christine E. McLin, which objections were on the ground that said notice was not in compliance with law in this, that it omits to state fully the terms of the partnership; it omits to state the general nature of the business intended to be transacted by the alleged copartnership, the period at which the partnership was to commence, how long it was to continue or when it was to terminate, and also omits to state where the business was to be transacted, and erred in admitting said paper in evidence over said objections, as shown by bill of exceptions.

5. Because the court erred in admitting in evidence over defendants' objections the agreement, dated April 24, 1884, to release the estate of R. W. McLin, deceased, from all liability on account of the claims of the signers thereto, and in overruling defendants' objections to same on the ground that it was irrelevant and im-
51 material and not admissible in evidence for the purpose for which it was offered, which was stated to be to show notice of the formation of limited partnership, and estopped against defendants to show that it was a special or limited partnership, as shown by bill of exceptions duly reserved.

6. Because the court erred in admitting the testimony of W. C. Oliver over the objections of defendants to show an agreement made between him as attorney for plaintiff herein and Mr. Carrington, the attorney for Mrs. Christine E. McLin, as shown by bill of exceptions.

7. Because the court erred in that part of its charge to the jury which instructed them, in substance, that if the limited partnership alleged by plaintiff was recognized as such in its inception by the three attaching creditors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor and its property attached as such after the assignment, and that its other creditors so treated and dealt with it and accepted the assignment to plaintiff as such, and that Mrs. McLin, named therein as the special partner, and W. T. Tuffly always treated it as a limited partnership, and that Mrs. McLin
52 loaned money as claimed and subsequently sued the plaintiff as its assignee therefor, then and in such case they might

likewise deem the same a limited partnership and regard the assignment to plaintiff as valid.

8. The court erred in refusing to give the charge No. 1 asked by the defendants and in failing to give any equivalent charge.

9. The court erred in refusing to give the second charge asked by defendants and in failing to give any equivalent charge.

10. The court erred in refusing to give the third charge asked by defendants and in failing to give any equivalent charge.

11. The court erred in refusing to give the fourth charge asked by defendants and in failing to give any equivalent charge.

12. The court erred in refusing to give the fifth charge asked by defendants and in failing to give any equivalent charge.

13. The court erred in refusing to give the sixth charge asked by defendants and in failing to give any equivalent charge.

14. The court erred in refusing to give the seventh charge asked by defendants and in failing to give any equivalent charge.

15. The court erred in refusing to give the eighth charge asked by defendants and in failing to give any equivalent charge.

16. The court erred in refusing to give the ninth charge
53 asked by defendants and in failing to give any equivalent charge.

17. The court erred in refusing to give the tenth charge asked by defendants and in failing to give any equivalent charge.

18. The court erred in refusing to give the eleventh charge asked by defendants and in failing to give any equivalent charge.

19. Tne court erred in refusing to give the twelfth charge asked by defendants and in failing to give any equivalent charge.

20. The court erred in refusing to give the thirteenth charge asked by defendants and in failing to give any equivalent charge.

21. The verdict of the jury is contrary to and is unsupported by the evidence, because the proof clearly showed that Mrs. McLin never contributed the full amount which the partnership certificate specified she was to contribute in order to make her a special partner in the firm of W. T. Tuffly, and it also clearly showed that she never contributed any actual cash whatever to the common stock, as specified in said partnership certificate, and it also clearly showed that within a month from the time of the signing of the partnership certificate she had diminished the amount of the capital stock
54 standing to her credit on the books of W. T. Tuffly to the extent of about $688.00, not including the sum of about $314.00, which Mrs. McLin had deducted and received out of her contribution as a special partner before it was ever passed to her credit on the books, which amount she never repaid. This alteration and diminution of her capital stock was made before any loan was ever made by her to W. T. Tuffly. These facts fully and clearly appeared from the testimony of the plaintiff's own witnesses and from the books of the partnership, and there was not a particle of proof that the attaching creditors, defendants herein, had any knowledge whatever of the alteration and diminution of her capital stock, even if such knowledge on their part would have relieved the partnership of the legal consequences of such alteration. The proof

also clearly showed that the partnership was carried on after such alteration and diminution was made. All the above facts were established by the testimony of the plaintiff's witnesses, and are uncontradicted. The proof introduced by plaintiff also clearly showed that W. T. Tuffly and Mrs. McLin, parties to the alleged special partnership, did not publish the terms of the partnership as required by law, but wholly omitted to state in their published notice
55 the general nature of the business to be transacted by them, the period at which the partnership was to commence, nor the period at which it was to terminate. The testimony also showed beyond question that Mrs. Christina E. McLin, one of the partners, had failed to join in the deed of assignment under which the plaintiff claims or to convey to him her individual property.

22. The verdict of the jury is excessive and contrary to the law and the evidence, because the highest cash value of the attached property in bulk, as shown by the evidence, was eleven thousand nine hundred and sixty dollars, and the verdict is grossly in excess of any legal estimate of value, as shown by the proof.

23. The verdict of the jury is contrary to the law.

24. The verdict of the jury is contrary to the evidence.

24. The judgment of the court is contrary to the law and the evidence.

C. ANSON JONES,
*Counsel for Defendants.*

Endorsements: "No. 1352, O. L. Louis Tuffly, assignee, *vs.* James G. Tracy *et al.*, defendants. Motion for new trial. Filed April 13th, 1886. C. Dart, clerk."

56 *Hearing for Motion for New Trial, April* 26, 1886.

From Minutes, March Term, April 26, 1886. Hearing on Motion for New Trial.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY *et als.* } 1352.

On this day again came the parties to this suit, by their attorneys, and thereupon came on to be heard the motion of the defendants herein for a new trial; and the same having been argued before the court, but the argument not being concluded, the further consideration of the said motion was postponed until to-morrow.

*Hearing on Motion Concluded & Submitted, April* 27, '86.

From Minutes, April 27, 1886. Hearing on Motion Concluded.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY *et als.* } 1352.

On this day again came the parties to this suit, by their attorneys;

and thereupon the hearing upon the motion of the defendants herein for a new trial was resumed before the court, and the hearing concluded and the motion submitted.

*Motion for New Trial Overruled, April* 30, 1886.

From Minutes. Overruling Motion for New Trial, April 30, 1886.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY and Others. } 1352.

The court having now duly considered the motion of the defendants herein for a new trial in this case, argued and submitted at a former day of this term, and the court being fully advised in
57 the premises, it is considered, and ordered by the court that the said motion be overruled, and that a new trial be not granted; to which ruling and order of the court the defendants, by their counsel, in open court excepted, and gave notice that they will apply for a writ of error to the Supreme Court.

*Order Fixing Amount of Bond upon Writ of Error, May* 7, '86.

From Minutes, March Term, May 7, 1886.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY and Others. } 1352.

On this 7th day of May, 1886, the defendants herein having signified their intention to prosecute a writ of error to the Supreme Court of the United States from the judgment herein, the bond for such writ of error and supersedeas is here now fixed at twenty-seven thousand dollars ($27,000.00).

58 *Defendants' 1st Bill of Exceptions. Filed in Open Court May* 7, 1886.

Defendant's 1st Bill of Exceptions.

In U. S. Circuit Court for the 5th Circuit and Eastern District of Texas, Sitting at Galveston.

LOUIS TUFFLY, Assignee,
*v.*
JAMES G. TRACY *et al.*

Be it remembered that, on the call of this cause for trial, the defendants, by their counsel, presented and urged their demurrer and exceptions to the petition of plaintiffs and to the amended petition and replication of plaintiffs, as follows:

In the Circuit Court of the United States, Eastern District of Texas, at Galveston.

LOUIS TUFFLY, Ass'ee,
*vs.*
JAMES G. TRACY *et al.* } No. 1352.

Now come the defendants herein (except the defendants W. L. Foley and W. D. Cleveland, not served) and, having first obtained leave of the court for that purpose, file this their first amended original answer in lieu of their original answer filed herein in the district court of Harris county on the 10th day of October, 1885, and demur to plaintiff's petition, and say the plaintiff's said petition herein and the matters and things therein contained are not
59 sufficient in law to entitle plaintiff to have and maintain his said action against them; and of this they pray the judgment of the court.

And said defendants specially except and demur to plaintiff's said petition, and say the same is insufficient in law—

I. Because said petition shows that the alleged firm of W. T. Tuffly was composed of two copartners, to wit, W. T. Tuffly and C. E. McLin, and it nowhere shows that the copartner C. E. McLin agreed to and joined in the execution of the said alleged assignment, but, on the contrary, shows that the said C. E. McLin did not join in and sign the said alleged assignment, and gives no sufficient reason, and indeed no reason whatever, why said C. E. McLin did not join in the said assignment.

II. Because the alleged assignment set out in the petition is insufficient, illegal, and void, because the same is signed only by one of the copartners, to wit, W. T. Tuffly, and because the same is made, as shown by its terms, for the benefit of such of W. T. Tuffly's creditors only as will consent to accept their proportional share of the property conveyed and discharge him from their respective claims, and does not include within its provisions and benefits the creditors of himself as copartner of the alleged firm of W. T. Tuffly, and because it does not purport or attempt to convey the entire partnership property of the firm, but only the individual property of said Tuffly and his property as a copartner of the alleged
60 firm of W. T. Tuffly.

III. If the alleged assignment set out in the petition can be construed and is construed to be for the benefit of the creditors of the alleged firm of W. T. Tuffly as well as the individual creditors of said Tuffly, then defendants especially except to said petition, because it shows that said alleged assignment is illegal & void, because it shows on its face that it is for the benefit only of such creditors as will accept their proportional share of the property conveyed, whereas it only attempts and purports to convey the property of said Tuffly which he owns as copartner or individually and does not convey the property of the firm of W. T. Tuffly..

IV. Because said alleged assignment set forth in the petition by

its terms unlawfully delays and hinders the creditors of the assignor, in this: it provides that the assignee is only to apply the proceeds of the property conveyed, ratably or otherwise, to the payment of the debts when he shall have sold, collected, and converted the entire property conveyed to him, whereas the law provides that an assignee shall make *pro rata* distribution whenever he shall have in his hands funds sufficient to pay ten per cent. of the debts due by the assignor.

61 V. Because said alleged assignment is illegal and void, because it, by its terms, admits the individual creditors of W. T. Tuffly to an equal participation with partnership creditors in the proceeds of the partnership property and thereby gives them an unlawful preference over the creditors of the partnership.

VI. Because the petition does not show that any of the creditors of said W. T. Tuffly have consented to or accepted the terms of said alleged assignment, and does not show the amount or value of the claims of such creditors.

VII. Defendants Scanlan, Dooley, Brady, and Tracy demur to said petition because it does not set forth with sufficient particularity how the defendant Tracy acted as United States marshal, nor that he acted under any process of court, nor state what process, and does not therefore set forth such state of facts as would entitle the plaintiff to a recovery on the bond of said Tracy as marshal.

And of all the foregoing demurrers the defendants pray the judgment of the court.

FRANK S. BURKE,
C. ANSON JONES,
*Att'ys for said Defendants.*

Which demurrer and exceptions being heard by the court and considered by the court are overruled; to which ruling of
62 the court the defendants, by their counsel, now here in open court, upon said ruling being announced, except and pray that their exceptions be noted on the record, and that a bill of exceptions be signed and made a part of the record, which is accordingly done in open court this 7th day of April, 1886. Signed in open court this 7th of May, 1886.

CHAUNCEY B. SABIN, [SEAL.]
*U. S. District Judge for the Eastern District of Texas.*

Endorsements: "No. 1352. Louis Tuffly, ass'ee, *v.* J. G. Tracy *et al.* Defendants' 1st bill of exceptions. Filed in open court May 7th, 1886. C. Dart, clerk."

63 *Def'ts' 2nd Bill of Exceptions. Filed May 7, 1886.*

Defendants' Second Bill of Executions [Exceptions]. Filed in Open Court May 7th, 1886.

In the Circuit Court of the United States, Eastern District of Texas, at Galveston.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY *et al.* } No. 1352.

Be it remembered that at the March term, A. D. 1886, of the circuit court of the United States in and for the eastern district of Texas, holding sessions at Galveston, Texas, to wit, on the 7th, 8th, 9th, 10th, and 12th days of April, 1886, the same being judicial days of the March term, 1886, of the said court, the above numbered and entitled cause came on to be heard, and thereupon the following evidence was introduced, to wit:

Plaintiff introduced in evidence the certificate of formation of special partnership between W. T. Tuffly and Christine E. McLin with the acknowledgments, affidavit, certificates, and indorsements thereto belonging, as follows:

64 THE STATE OF TEXAS,
*County of Harris.*

We, W. T. Tuffly and Mrs. Christine E. McLin, hereby certify that we have formed a copartnership under the firm name of W. T. Tuffly, under which firm name the business of such copartnership shall be conducted.

The general nature of the business intended to be transacted is a general retail and wholesale, if they see proper, fancy and staple dry goods and notion establishment in the city of Houston, Texas. W. T. Tuffly is and will be the general partner of such partnership, resident of the city of Houston, Texas, and Mrs. Christine E. McLin is and will be the special partner of such partnership, whose residence is also in said city of Houston, Texas.

The said Mrs. Christine E. McLin has contributed the sum of six thousand four hundred and nineteen $\frac{36}{100}$ dollars to the common stock. The said partnership is to commence on the 16th day of April, 1884, and continue for the space of two years, to end on the 16th day of April, 1886.

W. T. TUFFLY.
CHRISTINE E. McLIN.

THE STATE OF TEXAS,
*County of Harris.*

Before me, Garrett Hardcastle, a notary public in and for said State and county, on this day personally appeared W. T. Tuffly and

Mrs. Christine E. McLin, to me known to be the persons whose names appear subscribed to the foregoing certificate, and severally acknowledged that they had executed and subscribed said certificate for the purposes and considerations therein set forth.

In witness whereof I have hereunto set my hand and affixed my seal of office this 24th day of April, 1884.

[SEAL.] GARRETT HARDCASTLE,
*Notary Public, Harris County, Texas.*

65 THE STATE OF TEXAS, }
*County of Harris.* }

W. T. Tuffly, the general partner formed by the certificate hereto forming part, being duly sworn, on oath says that Mrs. Christine E. McLin, the special partner therein, has contributed to the common stock of said partnership the sum specified in said certificate, and the said sum has in good faith actually been paid in cash.

W. T. TUFFLY.

Subscribed & sworn to this April 24th, 1884.

[SEAL.] GARRETT HARDCASTLE,
*Notary Public, Harris Co., Texas.*

THE STATE OF TEXAS, }
*County of Harris.* }

I, A. Erichson, county clerk of said county, do hereby certify that the foregoing instrument of writing, with its certificate of authentication, was filed for registration in my office on the 25 day of April, A. D. 1884, at 9 o'clock a. m., and duly recorded on the 26 day of May, A. D. 1884, at 3.55 o'clock p. m., in the records of contracts of said county, in Book —, volume 2, on pages No. 38 & 39.

In testimony whereof witness my hand and official seal, at office, the 26 day of May, 1884.

[SEAL.] A. ERICHSON,
*County Clerk, Harris Co., State of Texas,*
By LAWRENCE L. COHEN, *Deputy.*

Endorsed: "3962. W. T. Tuffly with Mrs. Christine E. McLin. Certificate of partnership. Filed April 25th, 1884, at 9 a. m. A. Erichson, C. C. C., H. C., by Lawrence L. Cohen, dep."

66 Plaintiff also introduced in evidence the deed of assignment from W. T. Tuffly to the plaintiff, Louis Tuffly, dated March 23, 1885, being the same set forth in his petition herein, with acknowledgment, certificate, & schedules thereto belonging and endorsements thereon, including the acceptance of the assignment by Louis Tuffly indorsed thereon, all filed herein April 10, 1886, as follows:

67 *Assignment.*

THE STATE OF TEXAS, }
*County of Harris.* }

Whereas the firm of W. T. Tuffly, composed of W. T. Tuffly, the general partner, and C. E. McLin, as special partner, finding it impossible to pay its debts as they mature and being desirous to have a distribution of all the property of said firm and the property of the said W. T. Tuffly, partnership and individual, and wishing to avail himself of the provisions of the general assignment law in such cases made & provided:

Now, therefore, in consideration of the premises and one dollar to me in hand paid, I, W. T. Tuffly, hereby assign and convey and deliver possession of all and singular my property and effects, of whatever name and nature, both personal & real, and which I own as copartner and individually, and intended to include all property of which or in which I have any interest whatever, wherever the same may be, to Louis Tuffly, as assignee, for the purposes aforesaid, taking possession of the same and sell the same, collect and convert the same, and, when so sold, collected, and converted, to appropriate the same ratably or in full payment, as the case may be, of all my debts and the debts of the firm of W. T. Tuffly, said assignee to proceed under the law aforesaid. This assignment is intended for the benefit of all such of my creditors only as will consent to accept their proportional share of said property and estate so hereby conveyed and discharge me, as aforesaid, from their respective claims, said assignee to take lawful compensation for his services herein and expenses and counsel fees necessary to aid him and enable him to carry out the purposes of this conveyance. Schedules are hereto attached and are made as particular as I can do at this time, but in any particular where they may be incorrect or insufficient in detail they will be corrected by me.

In witness whereof I hereunto set my hand, at Houston, this March 23rd, 1885.

W. T. TUFFLY.

68 STATE OF TEXAS, }
*Harris County.* }

Before me, J. T. Ferguson, a notary public in and for Harris county, on this day personally appeared W. T. Tuffly, known to me to be the person whose name is subscribed to the foregoing instrument of writing, and acknowledged to me the execution of the same for the purposes and consideration therein contained and expressed.

Witness my hand and seal of office this 23rd day of March, A. D. 1885.

[SEAL.]

J. T. FERGUSON,
*Notary Public, Harris Co., Texas.*

A full and true account and inventory of all the creditors of W. T. Tuffly, with their place of residence, as far as known, the sum owing to each and the nature of the debt and the cause and consideration of the same.

| | | | |
|---|---|---|---|
| A. C. Mather & Co., Chicago | 21 | 00 | open acc't for mdse. |
| Quaker City Shirt Co., New York | 102 | 00 | " " " " |
| H. B. Claflin & Co., New York | 639 | 15 | " " " " |
| P. J. Willis & Bro., Galveston | 1,088 | 95 | note & open acc't for mdse. |
| W. H. Lyons & Co., New York | 1,372 | 86 | " " " " |
| H'y Charnock, New Orleans | 432 | 60 | " " " |
| Browning & Coyle, St. Louis | 74 | 60 | " " " |
| Rosenheim, Levis & Co., St. Louis | 125 | 60 | acceptance for mdse. |
| Morrison, Herriman & Co., New York | 8,818 | 63 | notes & open acc't for mdse. |
| Teft, Weller & Co., New York | 775 | 01 | " " " " |
| Dunham, Buckley & Co., New York | 1,007 | 93 | open acc't for mdse. |
| Chas. C. Carpenter, " | 14 | 40 | " " " " |
| New York Collar Co., " | 29 | 25 | " " " " |
| Thompson, Langdon & Co., " | 144 | 79 | " " " " |
| Warner Bros., " | 67 | 09 | " " " " |
| 69 Wm. O. Headley, New York | 75 | 58 | open acc't for mdse. |
| McIlhenny & Co., Houston | 42 | 51 | " " " " |
| Chilton, Guithree & Co. | 99 | 67 | " " " " |
| Cook & Valentine | 97 | 32 | " " " " |
| Princess of Wales Co., New York | 13 | 00 | " " " " |
| Max Judd & Co., St. Louis | 619 | 60 | note. |
| New Braunfels Manf. Co., New Braunfels | 259 | 00 | open acc't. |
| C. L. Woodbridge, New York | 84 | 07 | " " |
| Trojan Shirt & Collar Co. | 72 | 50 | " " |
| Mrs. C. E. McLin | 7,798 | 00 | notes, borrowed money. |
| Mattie Simmons | 505 | 00 | due bill. |
| C. J. Wright | 200 | 00 | acc't borrowed money. |
| Wages, W. P. Archer, Houston | 238 | 65 | open acc't. |
| " Mrs. L. Justice, " | 40 | 30 | " " |
| " Joe Schwander, " | 27 | 85 | " " |
| Mdse., Sam'l Roos, " | 9 | 95 | " " |
| " E. H. Renish & Co., Houston | 3 | 25 | " " |
| Light, Houston Electrical Light Co., Houston | 46 | 00 | " " |
| Insurance, S. O. Cotton & Bro., Houston | 49 | 00 | " " |
| Oil, Tex. Lamp & Oil Co., Houston | 3 | 45 | " " |
| Mdse., Alf. Chimine, " | 2 | 75 | " " |
| " Melinger & Bro., " | 3 | 50 | " " |
| " C. J. Koehler, " | 2 | 15 | " " |
| " Jas. Bute, " | 5 | 38 | " " |

| | | | | | | |
|---|---|---|---|---|---|---|
| Mdse., Wm. Dissen, | Houston | 48 | 95 | open | acc't. | |
| " W. L. Foley, | " | 3 | 10 | " | " | |
| " A. L. Steele, | " | 5 | 16 | " | " | |
| Mdse., G. W. Baldwin, | " | 2 | 10 | " | " | |
| 70 " H. Waddell, | " | 7 | 00 | " | " | |
| " A. L. Steele, | " | 19 | 80 | " | " | |
| Mdse., H. M. Brown, | Hempstead | 31 | 35 | " | " | |
| City Bank, secured by Krupp & Tuffly, endorsers | | 500 | 00 | | | |
| Secured by J. R. Morris, endorser | | 500 | 00 | | | |
| Secured by Loan Ass'n stock | | 750 | 00 | | | |
| Hugh Burns, rent; has lien on goods in building | | 500 | 00 | | | |
| Some city bills, due April 1st, 1885, amounts not ascertained, but amounting to about | | 50 | 00 | | | |

THE STATE OF TEXAS, }
*County of Harris.* }

W. T. Tuffly, being duly sworn, on oath says that the foregoing inventory is in all respects just and true, according to his best knowledge and belief.

W. T. TUFFLY.

Subscribed and sworn to this March 23, 1885.

[SEAL.] J. T. FERGUSON,
*Notary Public, Harris County, Texas.*

A full and true inventory of the assignor'-, W. T. Tuffly's, estate at the date of his assignment, March 23rd, 1885, both real and personal, in law and equity.

| | |
|---|---|
| A stock of assorted merchandise in store in the Burns building, on the corner of Prairie and Congress streets, amounting in value to about | $25,000 00 |
| Notes & open accounts of various parties, nominally of value of about $5,000, as appears on the books of the company, which are referred to as part of this schedule | 5,000 00 |
| 3 shares of Loan Association stock (but upon this the City Bank has lien to secure $750.00) | 750 00 |
| Furniture and fixtures in store | 1,300 00 |
| 71 ½ int., blocks Nos. 126, 127, 131, 132, 133, & 134, Ryan's ad'n to city of Houston | 500 00 |
| Lots Nos. 11, 12, 13, & 14, block No. 2, Johnson ad'n | 400 00 |

There is a landlord's lien on mdse. in store in favor of Hugh Burns for $750.00 rent.

| | |
|---|---|
| Block No. sixty (62), in Baker's ad'n to city, of subdivision to lot No. 35 in O. Smith sur. | 800 00 |

THE STATE OF TEXAS, }
*County of Harris.* }

W. T. Tuffly, being duly sworn, on oath says that the foregoing inventory is in all respects just and true, according to his best knowledge and belief.

W. T. TUFFLY.

Subscribed and sworn to this March 23, 1885.

[SEAL.] J. T. FERGUSON,
*Notary Public, Harris County, Texas.*

THE STATE OF TEXAS, }
*County of Harris.* }

I, Alex. Erichson, county clerk of said county, do hereby certify that the foregoing instrument in writing, with its certificate of authentication, was filed for registration in my office on the 23rd day of March, A. D. 1885, at 3.30 o'clock p. m., and duly recorded on the 30th day of March, A. D. 1885, at — o'clock — m., in the Records of Deeds of said County, in Book —, volume 31, on pages No. 589 till [to] 593, incl.

In testimony whereof witness my hand and official seal, at office, this 30th day of March, 1885.

[SEAL.] ALEX. ERICHSON,
*County Clerk, Harris Co., State of Texas,*
By HUGO LEHMANN, *Deputy.*

The foregoing paper — endorsed as follows:

"No. 5633. C. L., 1352. W. T. Tuffly to Louis Tuffly. Assignment. I hereby accept this assignment this March 23, '85. Louis Tuffly. Filed for record M'ch 23, 1885, at 3.30 p. m. Alex. Erichson, C. C. C., H. Co., by L. H. Waring, deputy. $6.00 p'd. Filed Ap'l 10, 1886. C. Dart, clerk."

72 Plaintiff also introduced in evidence certified copy of the bond of Louis Tuffly as assignee, dated M'ch 23, 1885, filed herein April 10, 1886, with all endorsements thereon and certificates thereto, as follows:

5637. Louis Tuffly to State of Texas. Bond.

THE STATE OF TEXAS, }
*County of Harris.* }

Whereas W. T. Tuffly, on the 23d day of March, 1885, made an assignment unto Louis Tuffly of all his property and estate for the benefit of all his creditors, individual as well as partnership; and whereas the said Louis Tuffly has accepted said assignment: Now, therefore, we, Louis Tuffly, as principal, and —— ——, as securities, are bound to pay to the State of Texas the sum of twenty-seven thousand dollars, lawful money, conditioned that the said Louis Tuffly will faithfully discharge his duties as such assignee,

and that he will make proportional distribution of the nett proceeds of said estate among the creditors of W. T. Tuffly entitled thereto.

Witness our hands, at Houston, this March 23d, 1886.

LOUIS TUFFLY.
JOHN KRUPP.
S. CONRADI.
W. L. FOLEY.
R. W. CRAWFORD.

Endorsed: Approved this 23d day of March, 1885. Attest: James Masterson, judge 11th dist. of Texas. [L. S.] Filed March 23d, 1885, at 5.35 p. m., and recorded March 31st, 1885.

THE STATE OF TEXAS, }
*County of Harris.* }

I, Alex. Erichson, clerk of the county court in and for the county and State aforesaid, hereby certify the above and foregoing to be a true and correct copy of the bond of Louis Tuffly, assignee of W. T. Tuffly, as the same appears of record in my office in Record of Deeds of Harris County, vol. 31, page 598; and, further, that said bond itself is now on file in my office.

73 Witness my hand and official seal, at office, in Houston, Texas, this 7th day of November, 1885.

[SEAL.]

ALEX. ERICHSON,
*Cl'k Co. Court, Harris Co., Texas,*
By L. H. WARING, *Deputy.*

Endorsements on foregoing copy of bond: "C. L., 1352. Louis Tuffly to State of Texas. Bond. Certified copy. Filed April 10, 1886. C. Dart, clerk."

Plaintiff also introduced in evidence, over defendants' objections, the notice of formation of special partnership between W. T. Tuffly and Christine E. McLin, dated April 25, 1884, with order of clerk and affidavit of J. L. Watson thereon, as follows:

"HOUSTON, *April* 25, 1884.

The undersigned give notice that they have formed a copartnership under the firm name of W. T. Tuffly, having the following terms, as will appear by their executed and recorded certificate: W. T. Tuffly is the general partner; Mrs. Christina E. McLin is the special partner, and has contributed to the common stock the sum of six thousand four hundred and nineteen $\frac{36}{100}$ dollars.

W. T. TUFFLY.
CHRISTINE E. McLIN.

I, Alexander Erichson, clerk of the county court of Harris county, direct the foregoing advertisement shall be published six weeks in the Houston Evening Journal.

Witness my hand this 25th day of April, 1884.

A. ERICHSON,
*C. C. C., H. C.*

THE STATE OF TEXAS, }
*County of Harris.* }

I, J. L. Watson, manager and publisher of the newspaper published in the city of Houston, county of Harris, hereby solemnly swear that the foregoing notice was published in the newspaper known as the Houston Evening Journal for six successive weeks from the 26 day of April, 1884.

J. L. WATSON.

74 Subscribed and sworn to this sixth day of June, 1884.

Sworn to & subscribed before me this 7th day of November, 1885.

ALEX. ERICHSON,
*C. C. C., H Co.,*
By HUGO LEHMANN, *Deputy.*"

And in connection therewith introduced the testimony of J. L. Watson, showing that he presented said paper to one of the deputies of the county clerk's office of Harris county, Texas, and subscribed and swore to the same before him on the 6th day of June, 1884, and also that the foregoing notice of partnership was published in the Houston Evening Journal for six successive weeks from the 25th of April, 1884; that said Watson was manager of said paper and had special charge of that department, and that the foregoing was the same paper so published as aforesaid; that he swore to it on the 7th November, 1885, at the request of Mr. Tuffly, because the clerk had failed to put his jurat to it on the 6th of June, 1884; that said notice was published in said paper daily between Friday, the 25th of April, 1884, and Friday, the 6th day of June, 1884, inclusive. Above said notice in each publication was a caption in head-letters, legal style, words as follows: " Copartnership notice."

Plaintiff also offered in evidence the agreement of the creditors of the firm of R. W. McLin & Co., dated April 24, 1884, as follows:

"A."

The undersigned, creditors of the late firm of R. W. McLin & Company, in consideration of the assumption of all the indebtedness of said late firm by the firm of W. T. Tuffly, composed of W. T. Tuffly, general, and Christina E. McLin, special, partner, as appears by the certificate by the- signed, hereby release the estate of R. W. McLin, deceased, from any and all liability on account of the obli-

gations of said firm of R. W. McLin & Co., either by note or
75 open account or otherwise.

Houston, April 24th, 1884.

MORRISON, HERRIMAN & CO.,
By A. WILSON.
DUNHAM, BUCKLEY & CO.,
By A. WILSON.
TEFFT, WELLER & CO.,
By ANDREW WILSON.
W. H. LYONS & CO.,
By ANDREW WILSON.
WHITFIELD, POWERS & CO.,
By ANDREW WILSON.
MILLS & GIBB,
By ANDREW WILSON.
WM. O. HEADLEY & SON,
By ANDREW WILSON.
HALSTEAD, HAINES & CO.,
By ANDREW WILSON.
P. J. WILLIS & BRO.,
By ANDREW WILSON.
WM. E. BURLOCK & CO.,
By ANDREW WILSON.
WM. A. DROWN & CO.,
By ANDREW WILSON.
ROSENHEIM, LEVIS & CO.,
By ANDREW WILSON.
THOS. RUSSELL & CO.,
By ANDREW WILSON.
L. V. HOLTZMARSTER,
By ANDREW WILSON.
FRANKENTHAL BROS.,
By ANDREW WILSON.
MAX JUDD & CO.,
By ANDREW WILSON.

And thereupon, when said agreement was offered in evidence, defendants' counsel asked the plaintiff's counsel to state the purpose for which it was offered, and plaintiff's counsel stated that it was offered for the purpose of showing notice to defendants Morrison, Herriman & Co., Dunham, Buckley and Co., and Wm. H. Lyon & Co. of the formation and existence of a special partnership between W. T. Tuffly and Christine E. McLin, and also to sustain plaintiff's plea that defendants were estopped to deny the formation and existence of said special partnership or to show that it was not legally formed or carried on; and thereupon when said agreement was offered in evidence, defendants, by their counsel, objected to the introduction of the same in evidence upon the ground that it was irrelevant and
76 immaterial for the purpose for which it was offered, and for the further reason that it was not the way to prove notice of formation of a special partnership and to prove estoppel against

defendants, but said objections were by the court overruled and said agreement was admitted in evidence before the jury; to which ruling of the court the defendants, by their counsel, then and there excepted and prayed a bill of exceptions, which is here now granted, signed, sealed, and made a part of the record.

Plaintiff also introduced in evidence a certified copy of the bond of defendant, James G. Tracy, as United States marshal, as follows:

"Know all men by these presents that we, James G. Tracy, as principal, and Timothy H. Scanlan, Henry H. Dooley, and John T. Brady, as sureties, all residents of the city of Houston, county of Harris, and State of Texas, are held and firmly bound unto the United States of America in the full and just sum of twenty thousand dollars, lawful money of the United States, to be paid to the United States; for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents.

Signed with our hands and sealed with our seals this seventh day of May, in the year one thousand eight hundred and eighty-four.

The condition of the foregoing obligation is such that whereas the President of the United States hath, pursuant to law, appointed the said James G. Tracy to be marshal of the United States, to have and to hold the same, with all the rights, privileges, and emoluments thereunto lawfully appertaining, for four years from the second day of April, 1884, unless sooner removed therefrom, as by a commission to him, bearing date the second day of April, 1884, more fully appears:

77 Now, if the said James G. Tracy, by himself and by his deputies, shall faithfully perform all the duties of the said office of marshal, then this obligation to be void; otherwise to remain in full force and virtue.

JAMES G. TRACY. [SEAL.]
TIMOTHY H. SCANLAN. [SEAL.]
HENRY H. DOOLEY. [SEAL.]
JOHN T. BRADY. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAMES W. JONES.
CHAUNCEY B. SABIN.

THE STATE OF TEXAS, } ss:
*Harris County,* }

I, Timothy H. Scanlan, one of the sureties on the annexed bond, being duly sworn, depose and say that I am worth, after paying my just debts, the sum of one hundred and fifty thousand dollars, exclusive of property exempt from execution by the laws of the State in which I reside, and that I am on the official bond of Seth B. Strong, assistant postmaster of Houston, for fifteen thousand dollars ($15,000) and upon the official bond of Jerry Sullivan, policeman of the city of Houston, for five hundred dollars, and that I am not responsible as surety on the bond of any other official.

TIMOTHY H. SCANLAN.

Subscribed and sworn to before me this 7th day of May, A. D. 1884.

CHAUNCEY B. SABIN,
*United States District Judge for the Eastern District of Texas.*

THE STATE OF TEXAS, }
*Harris County,* } ss:

I, Henry H. Dooley, one of the sureties on the annexd bond, being duly sworn, depose and say that I am worth, after
78 paying my just debts, the sum of fifteen thousand dollars, exclusive of property exempt from execution by the laws of the State in which I reside, and that I am not responsible as surety on the bond of any other official.

HENRY H. DOOLEY.

Subscribed and sworn to before me this 7th day of May, A. D. 1884.

CHAUNCEY B. SABIN,
*United States District Judge for the Eastern District of Texas.*

THE STATE OF TEXAS, }
*Harris County,* } ss:

I, John T. Brady, one of the sureties on the annexed bond, being duly sworn, depose and say that I am worth, after paying my just debts, the sum of twenty thousand dollars, exclusive of property exempt from execution by the laws of the State in which I reside, and that I am not responsible as surety on the bond of any other official.

JOHN T. BRADY.

Subscribed and sworn to before me this 7th day of May, A. D. 1884.

CHAUNCEY B. SABIN,
*United States District Judge for the Eastern District of Texas.*

EASTERN DISTRICT OF TEXAS,
HOUSTON, HARRIS COUNTY, TEXAS, *May 7th*, 1884.

I, Chauncey B. Sabin, United States district judge for the eastern district of Texas, certify that the foregoing bond was executed before me this 7th day of May, 1884.

That James G. Tracy, the principal therein, — is personally well known to me, acknowledged his signature thereto and the execution thereof to me in person, and that his sureties, Timothy H. Scanlan,
Henry H. Dooley, and John T. Brady, are well and person-
79 ally known to me, and that they respectively signed the same in my presence, and likewise severally acknowledged the execution thereof for the uses and purposes and consideration therein set forth; and I further certify that each of the said sureties are inhabitants and freeholders of the county of Harris and State of Texas, in the eastern district of Texas, and that such sureties are

ample and sufficient for the said bond, and that I do hereby approve of the said sureties as well also as of the said bond, which is ordered to be filed and recorded in the office of the clerk of the United States district court for the eastern district of Texas, sitting at Galveston, Texas.

CHAUNCEY B. SABIN,
*United States District Judge for the Eastern District of Texas.*"

"I, James G. Tracy, do solemnly swear that I will faithfully execute all lawful precepts directed to the marshal of the eastern district of Texas under the authority of the United States and true returns make, and in all things well and truly and without malice or partiality perform the duties of the office of marshal of the eastern district of Texas during my continuance in said office, and take only my lawful fees, so help me God.

JAMES G. TRACY.

Subscribed and sworn to before me this 7th day of May, A. D. 1884.

CHAUNCEY B. SABIN,
*United States District Judge for the Eastern District of Texas.*"

Endorsed: "Filed May 8th, A. D. 1884. Geo. C. Rives, clerk."

"I, James G. Tracy, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I
80 have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto; and I do further swear that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, so help me God.

JAMES G. TRACY.

Subscribed and sworn to before me this 7th day of May, A. D. 1884.

CHAUNCEY B. SABIN,
*United States District Judge for the Eastern District of Texas.*"

Endorsed: "Filed May 8th, A. D. 1884. Geo. C. Rives, clerk."

The foregoing bond and oaths endorsed as follows: "Bond of

James G. Tracy, United States marshal for the eastern district of Texas; dated May 7th, 1884; approved May 7th, 1884. Filed May 8, 1884. Geo. C. Rives, clerk U. S. district court, E. D. T., G."

In the District Court of the United States for the Eastern District of Texas, at Galveston, Texas.

I, George C. Rives, clerk of the district court of the United States for the eastern district of Texas, at Galveston, in said district, do hereby certify the foregoing to be a true and correct copy of the bond and oaths thereto of Jas. G. Tracy, United States marshal for the eastern district of Texas, approved May 7th, 1884, and filed May 8th, 1884, as the same now appears on file and of record in my office.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this the 8th day of Ap'l, A. D. 1886.

81 [SEAL.] GEO. C. RIVES,
*Clerk U. S. District Court, E. D. T., at Galveston,*
By C. DART, *Deputy.*

Copy endorsed: " Filed Ap'l 10, 1886. C. Dart, clerk. C. L., 1352."

Plaintiff also introduced evidence tending to show that he took possession of the assigned property immediately after the assignment and retained continuous and exclusive possession of the same until March 31, 1885, and until it was taken from his possession by defendant Tracy as U. S. marshal under writs of attachment in favor of Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., and that he had had nothing to do with it since except to file this suit.

Plaintiff also proved that the following list of creditors, to wit, J. R. Morris, Houston, Tex., 500.00; Trojan Shirt & Collar Co., N. Y., 76.00; McIlhenny & Co., Houston, Tex., 88.67; G. W. Baldwin, Houston, Tex., 4.05; Teft, Weller & Co., New York, 771.32; P. J. Willis & Bro., Galveston, Tex., 1,135.51; W. P. Archer, Houston, Texas, 282.90; C. J. Wright, Houston, Tex., 200.00; Joe Schwander, Houston, Tex., 49.90; E. Tuffts, Houston, Tex., 24.85; Krupp & Tuffly, Houston, Tex., 500.00; New Braunfels Man'f'g Co., New Braunfels, Tex., 259.00; Wm. Disson, Houston, 54.45; Cook & Valentine, New York, 97.32; H'y Charnock, New Orleans, La., 432.30; C. L. Woodbridge & Co., New York, 110.18; A. C. Mather & Co., Chicago, 21.00; New York Collar Co., N. York, 26.33; Mattie Simmons, Galveston, 505.00; H. B. Claflin & Co., New York, 639.15; Max Judd & Co., St. Louis, 619.60; Mrs. Lizzie Justice, Houston, 26.17; Eugene Rhodes, Houston, 22.50; Rosenheim, Levis & Co., St. Louis, 125.60; Quaker City Shirt Co., New York, 102.00; Browning & Coyle, St. Louis, Mo., 74.60; Thompson, Langdon & Co., New York, 144.79; S. O. Cotton & Bro., Houston, 13.91; Chas. C. Carpenter, New York, 14.40; Wm. O. Headley & Son, New York, 75.58; Warner Bros., New York, 67.09; Geo. Bastian, Houston, 51.79, had all accepted the foregoing assignment, and that they are all the

creditors who have accepted the assignment. Said claims of accepting creditors amount to $7,116.26, not including the claim of Mrs. McLin for about $8,000.00; that defendants herein, Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., had not accepted under said assignment; that during
82 part of the time plaintiff was in possession under the assignment the agent of Morrison, Herriman & Co. was about the premises and knew of his possession. Plaintiff also introduced evidence tending to prove that he made deposits in bank of all cash received by him in the name of Louis Tuffly, assignee.

Plaintiff also introduced in evidence the writs of attachment issued out of this court in cause No. 1327, Morrison, Herriman & Co. *v.* W. T. Tuffly; 1328, Dunham, Buckley & Co. *v.* W. T. Tuffly, and 1329, Wm. H. Lyon & Co. *v.* W. T. Tuffly, and the returns thereon, as follows:

Circuit Court of the United States, Eastern District of Texas.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

We command you that you attach forthwith so much of the property of W. T. Tuffly, if to be found in your district, repleviable on security, as shall be of value sufficient to make the sum eight thousand eight hundred and twenty-one $\frac{13}{100}$ dollars ($8,821.13) and the probable costs of suit, to satisfy the demand of George A. Morrison and John Herriman, copartners under the firm name of Morrison, Herriman & Co., and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon, to be had before our said circuit court, in Galveston, in the eastern district of Texas, on Monday, the 2nd day of November, 1885, when and where you shall make known how you have executed this writ. Herein fail not.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 31st day of March, A. D. 1885.

[SEAL.] C. DART,
*Clerk U. S Circ't Court, E. D. T., G.*

83 *Marshal's Return.*

Came to hand March 31, 1885, and executed same day by levying this writ upon and taking into my possession the stock of goods, wares, and merchandise at the storehouse at No. —, corner Main and Prairie streets, in the city of Houston, pointed out by C. Anson Jones, as agent of plaintiffs, as the property of the defendant, and an inventory of said stock of goods, wares, and merchandise is hereto attached, marked Exhibit "A." I also further executed this writ on March 31, 1885, by levying upon the following-described real estate, property of the defendant, the same having been pointed out to me by C. Anson Jones, agent of the plaintiffs, to wit: One-half interest

in blocks 126, 127, 131, 132, 133, & 134, Ryan's Addition to the city of Houston, valued at $500.00; lots 11, 12, 13, & 14, in block 2, Johnson's Addition to the city of Houston, valued at $400.00; block No. 62, in Baker's Addition of subdivision of lot 35, in the O. Smith survey, valued at $800.00; total, $1,700.00.

Said property is still in my possession and has not been claimed or replevied.

J. G. TRACY,
*U. S. Marshal.*

Circuit Court of the United States, Eastern District of Texas.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

We command you that you attach forthwith so much of the property of W. T. Tuffly, if to be found in your district, repleviable on security, as shall be of value sufficient to make the sum of one
84 thousand and seven $\frac{93}{100}$ dollars ($1,007.93) and the probable costs of suit, to satisfy the demand of James H. Dunham and William Buckley and Charles H. Webb, copartners under the firm name of Dunham, Buckley & Company, and that you keep and secure in your hands the property so attached, unless replevied, that the same may be liable to further proceedings thereon, to be had before our said circuit court, in Galveston, in the eastern district of Texas, on Monday, the 2nd day of November, 1885, when and where you shall make known how you have executed this writ. Herein fail not.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme
[SEAL.] Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 31st day of March, 1885.

C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

*Marshal's Return.*

Came to hand March 31, 1885, and executed same day by levying upon and taking into my possession the stock of goods, wares, and merchandise at the storehouse at No. —, corner Main & Prairie streets, in the city of Houston, Texas, pointed out by C. Anson Jones, as agent of the plaintiffs, as the property of the defendant, and an inventory of said stock of goods, wares, and merchandise is hereto attached, marked Exhibit "A." This levy is made subject to a levy this day made by me upon the same property under writ of attachment issued March 31, 1885, at the suit of Morrison, Herriman & Co. *vs.* W. T. Tuffly, numbered 1327 on the law docket of the United States circuit court, at Galveston, for the sum of eight thousand eight hundred and twenty-one & $\frac{13}{100}$ dollars and costs of suit. I also further executed this writ on March 31, 1885, by levying upon the

following-described real estate, property of the defendant, the
85 same having been pointed out to me by C. Anson Jones, agent of the plaintiffs, to wit:

| | |
|---|---|
| One-half interest in blocks Nos. 126, 127, 131, 132, 133, & 134, Ryan's Addition to the city of Houston, valued at | $500 00 |
| Lots 11, 12, 13, & 14, in block 2, Johnson's Addition to the city of Houston, valued at | 400 00 |
| Block No. 62, in Baker's Addition of subdivision of lot 35, in the O. Smith survey, valued at | 800 00 |
| Total | $1,700 00 |

This levy is also made subject to a levy this day made by me upon the same property under writ of attachment issued March 31, 1885, at the suit of Morrison, Herriman & Co. *vs.* W. T. Tuffly, numbered 1327 on the law docket of the United States circuit court, at Galveston, for the sum of eight thousand eight hundred and ninety-one $\frac{13}{100}$ dollars and cost of suit.

J. G. TRACY,
*U. S. Marshal.*

Circuit Court of the United States, Eastern District of Texas.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

We command you that you attach forthwith so much of the property of W. T. Tuffly, if to be found in your district, repleviable on security, as shall be of value sufficient to make the sum of one thousand two hundred and seventy-nine $\frac{58}{100}$ dollars ($1,279.58) and the probable costs of suit, to satisfy the demand of William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, copartners under the firm name of William H. Lyon and Company, and that you keep and secure in your hands the property so attached, unless
86 replevied, that the same may be liable to further proceedings thereon, to be had before our said circuit court, in Galveston, in the eastern district of Texas, on Monday, the second day of November, 1885, when and where you shall make known how you have executed this writ.

Herein fail not.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the eastern district of Texas, at Galveston, this 31st day of March, A. D. 1885.

[SEAL.]

C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

Came to hand March 31, 1885, and executed same day by levying upon and taking into my possession the stock of goods, wares, and merchandise at the storehouse at No. —, corner Main & Prairie streets, in the city of Houston, Texas, pointed out by C. Anson Jones,

as agent of the plaintiffs, as the property of defendant, and an inventory of said stock of goods, wares, and merchandise is hereto attached, marked Exhibit "A." This levy is made subject to a levy this day made by me upon the same property under writ of attachment issued March 31, 1885, at the suit of Morrison, Herriman & Co. *vs.* W. T. Tuffly, numbered 1327 on the law docket of the United States circuit court, at Galveston, for the sum of $8.821.13 and costs of suit, and further subject to a levy this day made by me upon the same property under writ of attachment issued March 31, 1885, at the suit of Dunham, Buckley & Co. *vs.* W. T. Tuffly, numbered 1328 on the same docket in said court, for the sum of $1,007.93 and costs of suit.

I also further executed this writ on March 31st, 1885, by
87 levying upon the following-described real estate, property of the defendant, the same having been pointed out to me by C. Anson Jones, agent of the plaintiffs, to wit:

| | |
|---|---|
| One-half interest in blocks Nos. 126, 127, 131, 132, 133, & 134, Ryan's Addition to the city of Houston, valued at | $500 00 |
| Lots 11, 12, 13, & 14, in block 2, Johnson's Addition to the city of Houston, valued at | 400 00 |
| Block No. 62, in Baker's Addition of subdivision of lot 35, in the O. Smith survey, valued at | 800 00 |
| Total | $1,700 00 |

This levy is also made subject to a levy this day made by me upon the same property under writ of attachment issued March 31, 1885, at the suit of Morrison, Herriman & Co. *vs.* W. T. Tuffly, numbered 1327 on the law docket of the United States circuit court, at Galveston, for the sum of eight thousand eight hundred and ninety-one $\frac{13}{100}$ dollars and costs of suit.

J. G. TRACY,
*U. S. Marshal.*

Plaintiff also proved that the property seized by the defendant, J. G. Tracy, as U. S. marshal, under said writs was the same property for the seizure of which this suit is brought, and that it was appraised by him at $11,970.00, besides $43.00 cash and the fixtures; and evidence was introduced tending to show that the property so seized was worth the amount found by the jury, to wit, $17,000.00, and more. Plaintiff also introduced evidence tending to show that at the time of the making of the deed of assignment by the firm of W. T. Tuffly, on March 23, 1885, said firm was not able to pay its debts as they matured, and that said assignment was made in contemplation of insolvency, and that the property assigned was
88 taken possession of by Louis Tuffly, plaintiff herein, under said deed of assignment.

There was also proof tending to show that said firm of W. T. Tuffly was not insolvent on March 23, 1885.

In addition to the foregoing testimony and on the issue of estoppel raised by plaintiff's amended petition and replication filed Nov.

17th, 1885, alleging that defendants were estopped, by reason of their actings and dealings with the alleged special partnership of W. T. Tuffly, to deny that it was a special or limited partnership or to show that it was not such, the following evidence was introduced, to wit:

There was evidence tending to show that on March 26, 1884, R. W. McLin, who was then and for some time prior thereto had been a partner with W. T. Tuffly under the firm name of R. W. McLin & Co., died, leaving surviving him as his sole heirs his wife, Christine E. McLin, and their two minor children; that after the death of said McLin one Andrew Wilson came out to Houston, representing certain of the creditors of the firm of R. W. McLin & Co., to settle up the business and claims of said creditors, and that, among other creditors, he represented and was the agent of Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., the attaching creditors mentioned in this cause; that said Wilson suggested and advised the formation of a special partnership between W. T. Tuffly and Christine E. McLin, and was the man that instigated this thing and knew the whole thing; that the bills sued on and under which the attachments complained of by plaintiff were sued out were accumulated after the formation of the partnership between W. T. Tuffly and Christine E. McLin, and that all the creditors signing the document attached to the amended petition, filed Nov. 17, 1885, dated April 24, 1884, releasing the firm
89 of R. W. McLin & Co. and accepting the assumption of the firm of W. T. Tuffly knew that Mrs. McLin was a special partner; that Mrs. McLin put in $6,419.36 into the concern, and that the creditors above referred to knew of it and sold W. T. Tuffly goods after that time, and that the bills they sued on are for these goods; that said Wilson talked with Mrs. McLin a number of times and was the instigator of the whole thing and said that there was lots of money in the business if it was well taken care of; that W. T. Tuffly said he wanted to run on a smaller scale, and that Wilson influenced him and talked to Mrs. McLin and said that there was no show in Houston for any second-class store; that there was only a show for a first-class store, and that Morrison, Herriman & Co. would help W. T. Tuffly and Mrs. McLin out; that said Wilson knew they had this special partnership and sold them goods afterwards; that there was no concealment or attempt made to mislead Wilson; that he was there the whole time every day; that he virtually run the business for two or three weeks himself, as agent for the creditors above named, viz., from the time he came out to Houston, some time between the 1st and 10th of April, 1884, until he left the State, some time about the latter part of April, 1884—say about the 23d, 24th, or 25th of April, 1884; that W. T. Tuffly notified Wilson of McLin's death by telegraphing him on the night of the death and asking him to come to Houston and represent the creditors, and that the special partnership was the result of his coming to Houston; that said firm of R. W. McLin & Co. owed a great many debts and had property, and that Mrs. Christine E. McLin sold out her interest to W. T. Tuffly, and that he had the money in the bank at her disposal, and then

Mr. Wilson induced her to become a special partner and put the money into the business; that said Wilson advised her to go into that special partnership.

90 That her brother, W. T. Tuffly, told her he did not want her to jeopardize the money by going into the business, and that Wilson assured her that it would not jeopardize her money by going into a special partnership; that her brother all the time said that he did not want to continue business unless she could be separated from it and not have anything to do with it, and then Mr. Wilson came and spoke to her about it—of course, in a friendly way—and advised her that it was the best way, and said several things to her and influenced her to go into the special partnership; that at the time Wilson came out the relations between him and W. T. Tuffly and Mrs. McLin were quite friendly, and that Mrs. McLin imagined that at the time Wilson advised her in that way he was acting as her friend; that her brother, W. T. Tuffly, did not have much to say, and that she had never met Mr. Wilson before; that the idea of W. T. Tuffly, before he conferred with Wilson, was to close out and not to carry on the business, and that Wilson persuaded him to carry on the business; that it was known at the time that Wilson was at Houston that Mrs. McLin would have coming to her about $8,000 insurance money on the life of her husband as soon as it could be collected from the insurance companies, and it was expected that she would make loans to the firm. Defendants introduced in evidence the depositions of said Andrew Wilson, tending to show that as the representative of a large number of the creditors of the firm of R. W. McLin & Co. he caused their indebtedness to be transferred to the new firm of W. T. Tuffly, accepting the new firm instead of the old; that he did not carry the transfer from Mrs. McLin to W. T. Tuffly and get her signature to it; that he believed Mrs. McLin to be a special partner in the firm of W. T. Tuffly, and that the amount to the credit of her husband in the firm of R. W. McLin & Co.,

91 as represented by his share in the various properties of the firm, was her contribution to the special capital; also tending to show that he assisted in making an accounting of the properties of the firm of R. W. McLin & Co. to see if the firm was solvent and in settlement of the accounts of the creditors he represented; that he represented no one but creditors and had nothing to do with forming the firm of W. T. Tuffly; that he did not advise the forming of the firm of W. T. Tuffly as it was formed or have anything to do with their act in that respect, and that he left Houston, Texas, about the 23d, 24th, or 25th of April, 1884. Defendants also introduced in evidence the following letter, to wit:

"HOUSTON, *April 4th*, 1884.

"Mess. Morrison, Herriman & Co., New York.

"GENTLEMEN: Herewith I send you list of creditors of the late firm of R. W. McLin & Co. Since the decease of the senior member of the firm I have continued in liquidation, and my sales are flattering. I have been disconcerted by the death of Mr. McLin, but will be able to pay in full within reasonable delay. I will withhold

any payment of maturing paper until I can communicate with all creditors. Mr. Wilson, with the firm of Morrison, Herriman & Co., of your city, our largest creditor, has been communicated with and will call on you before coming South, who can fully explain the situation. I can manage to meet all liabilities with your confidence, which I hope you will extend to me, I giving you the assurance that I will reserve for your entire participation in all payments as soon as I begin to meet paper in due course, and will ask of you such concession as to time as others are willing to concede.

"Hoping to receive favorable consideration at your hands and that you will extend me your counsel and confidence, I
92 remain, yours truly,

"W. T. TUFFLY."

Also the following letter from W. T. Tuffly to Andrew Wilson, viz:

"HOUSTON, *April 4th*, 1884.

FRIEND WILSON: Dispatch received last night; have mailed statement of am'ts due everybody, as requested, to all N. Y. creditors. Business has been very good, and all I want is time from our principal creditors; have not paid anything at all yet, but deposit money as fast as it comes in; also mentioned in all the letters you would call on them; also mailed M., H. & Co. one of them, which you can see. I do not think I will have any trouble to run the business if I can get some time on all am'ts no- due except the small bill, which I would like to pay as soon as I can, with the consent of larger creditors, of course; mail about to close; will write more fully to-morrow.

Your friend, W. T. TUFFLY."

Also the following letter from said Tuffly to said Wilson:

"HOUSTON, *April 6th*, 1884.

FRIEND WILSON: I wired you last night and wrote you the other day, and mailed statement, as requested; have not heard anything from any New York houses yet, but from closer houses have. They all seem to be satisfied so far. What I would like to do is to run the business on the same as usual; but in order to do so I will have to have some time from our principle creditors (as I wrote you before), which, if they grant, will allow me to buy goods for cash until I can establish a credit for myself, as you know to replutish the stock now without money to do so would not be an easy matter, as very few would be willing to ship goods untill everything was straightened out. Business has been very good. I have reduced prices somewhat, and am selling a good many goods for cash strictly, which — am depositing as fast as it comes in, and am not paying
93 anything, as I do not think it would be treating everybody concerned right to do so. Willis, of Galveston, next to M., H. & Co., are our largest creditor, and they seem to be willing to do anything that is right, but will not say what, but write me to go on

as usual; also say they are communicating with your house now. Let me hear from you as soon as possible.

Your friend, W. T. TUFFLY."

Also the following letter from said Tuffly to said Wilson, dated April 27th, 1884:

"HOUSTON, *April 27th*, 1884.

FRIEND WILSON: Enclosed find list of such things as we need now. I did not put any am't down, but want a small assortment of all, which I leave to your judgment. All of it can come by express except napkins, doyl-es, Irish linen, table covers, and pique. Business was pretty fair again yesterday—$307.00 cash. Yesterday I had quite a number of men—good citizens—to stop me on the street and come in the store also and tell me they were glad to see that the business was going to continue, and that I should have their custom; received your dispatch from Brenham, and see you will be in New York earlier than you expected; will go down to Galveston in the morning and get a few staples. Again thanking you for your many kind favors, I am

Your friend, W. T. TUFFLY."

94 The evidence of W. T. Tuffly also showed that he advised with an attorney, Mr. Hamblen, about the special partnership and had him draw up the papers; that Wilson came out in the interest of the creditors and was a personal friend of Mrs. McLin and himself; that their relations were friendly; that he was very anxious for Wilson to come out, and that if Wilson gave him any advice he (Tuffly) sought it and was solicitant for Wilson's good offices with the creditors whose authority and confidence he had, and felt that Wilson had it very much in his power to assist him in starting in the new business, and he sought his advice and counsel, and also had the advice of counsel, advising him and Mrs. McLinn; that the attorney drew the special partnership agreement and all other papers relating to the transfer; that he advised with his attorney as far as the legal part of the matter was concerned.

Defendants also introduced in evidence the following petitions, affidavits, and bonds for attachment and orders and decrees in causes Nos. 1327, 1328, & 1329, in the circuit court of the U. S. for the eastern district of Texas, at Galveston:

95 In the Circuit Court of the United States for the Eastern District of Texas, in the Fifth Circuit, Holding Sessions at Galveston, Texas.

To the honorable the judges of said court:

Your petitioners, George A. Morrison and John Herriman, who, in the matters hereinafter set forth, were and still are copartners as merchants under the firm name and style of Morrison, Herriman and Company, at the city of New York, in the State of New York, and hereinafter styled plaintiffs, complaining of W. T. Tuffly, mer-

chant, at Houston, in the county of Harris and State of Texas, respectfully represent—

That plaintiffs reside at the city of New York, in the county and State of New York, and that they are both citizens of the State of New York; that the defendant resides in the county of Harris, in the State of Texas, and is a citizen of the State of Texas.

That heretofore, to wit, on the second day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, six months after date thereof, the sum of six hundred and eighty-nine and $\frac{48}{100}$ dollars ($689.48), which note will be due and payable on the fifth day of April, A. D. 1885; that on the sixteenth day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, seven (7) months after date thereof, the sum of six hundred and eighty-nine and $\frac{48}{100}$
96 dollars ($689.48), which note will be due and payable on the nineteenth day of May, A. D. 1885; that on the first day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby he, defendant, promised and undertook to pay to plaintiffs or their order, seven (7) months after the date thereof, the sum of six hundered and eighty-nine and $\frac{48}{100}$ dollars ($689.48), which note will be due and payable on the fourth day of May, A. D. 1885; that on the said first day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, eight (8) months after date thereof, the sum of six hundred and eighty-nine and $\frac{49}{100}$ dollars ($689.49), which note will be due and payable on the fourth day of June, A. D. 1885.

That on the twenty-fifth day of November, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, six months after date thereof, the sum of nine hundred and seventy-four and $\frac{60}{100}$ dollars ($974.60), which note will be due and payable on the twenty-eighth day of May, A. D. 1885; that heretofore, to wit, on or about the — day of March, 1885, defendant drew his certain draft or bill of exchange on plaintiffs, requesting plaintiffs to pay to the order of the payee thereof the sum of five hundred dollars, and that on, to wit, the ninth day or [of] March, A. D. 1885, plaintiffs paid said draft or bill of exchange, and that on, to wit, the — day of March, A. D. 1885, defendant
97 drew his certain draft or bill of exchange on plaintiffs, requesting plaintiffs to pay to the order of the payee thereof the sum of two hundred and fifty dollars, and that on, to wit, the

eleventh day of March, A. D. 1885, plaintiffs paid said draft or bill of exchange; that at the time of the drawing and payment of said drafts plaintiffs were not indebted to defendant in any sum and had no funds of defendant in their hands or subject to defendant's control, but that they paid said drafts solely for the accommodation of defendant and as an advance to him of said sums of money, which were paid at the special instance and request of defendant, whereby defendant then undertook to become liable and promised to pay said sums of money whenever he should be thereunto requested; yet, to pay the same or any part thereof, though long since due and unpaid, and though payment thereof has been demanded, defendant has hitherto failed and refused and still fails and refuses, to plaintiffs' damage seven hundred and fifty dollars.

That heretofore, to wit, on the twelfth day of January, A. D. 1885, and on divers days subsequent thereto, at the several times specified in the account hereto annexed, marked Exhibit "A," and made a part of this petition, plaintiffs, at the special instance and request of defendant, sold and delivered to the defendant certain goods, wares, and merchandise, in consideration whereof defendant then undertook, promised, and agreed to pay plaintiffs, at the times hereinafter set forth, so much money as the said goods, wares, and merchandise were reasonable worth, and the same were at the time of the sale and delivery thereof reasonably worth the sums charged therefor, amounting in the aggregate to the sum of four thousand one hundred and eighty-seven dollars and ten cents ($4,187.10);
98 that defendant undertook, promised, and agreed to pay to plaintiffs said sum of money for the reasonable value of said goods at the following times, to wit: On June fifteenth, 1885, the sum of one hundred and eighty-six dollars and seventy cents ($186.70); on July fifteenth, A. D. 1885, the sum of three thousand two hundred and eight dollars and seventy-seven cents; on August 1st, A. D. 1885, seven hundred and ninety-one dollars and sixty-three cents, and that said sums of money will be due to plaintiffs from defendant on said last-named dates, respectively; that on the second day of February, A. D. 1885, defendant, for a valuable consideration, made and executed and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby he, defendant, undertook and promised to pay to plaintiffs or their order, fifty days after date thereof, the sum of one hundred and fifty-one dollars and fifty cents ($151.50), which note became due and payable on the twenty-seventh day of March, A. D. 1885; yet to pay the same or any part thereof, though long since due and unpaid, and though payment thereof has been demanded, defendant has hitherto failed and refused and still fails and refuses, to plaintiffs' damage one hundred and fifty-one dollars and fifty cents ($151.50).

That defendant is justly indebted to plaintiffs in said sums of money, due and to become due as hereinbefore set forth, amounting in the aggregate to eight thousand eight hundred and twenty-one dollars and thirteen cents, and that he has disposed of his property, in whole or in part, with intent to defraud his creditors; wherefore plaintiffs pray for process of attachment. Plaintiffs further say that

the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

99 Wherefore plaintiffs sue and pray for citation, attachment, and all other proper process and, upon hearing hereof and after their said debts shall have all become due, for judgment against defendant therefor and for costs of suit and for general relief.

And, as in duty bound, petitioners will ever pray.

C. ANSON JONES,
*Attorney for Plaintiffs.*

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, the undersigned, John Kennedy, a notary public in and for the county of Harris, in the State of Texas, on this day personally appeared Vernon Leman, to me known, who, being by me duly sworn, on oath says that he is the agent of the plaintiffs in the foregoing petition, composing the firm of Morrison, Herriman and Company, and authorized to make this affidavit in their behalf. He further says that the statements contained in the above and foregoing petition are true; that the defendant, W. T. Tuffly, is justly indebted to the plaintiffs, Morrison, Herriman & Co., in the sum of eight thousand eight hundred and twenty-one dollars and thirteen cents, due and to become due as follows, to wit:

| | |
|---|---|
| Cash paid for his account past due (which is principal), paid, as stated in petition, on his drafts | $750 00 |
| Note due and unpaid March 27th, 1885 | 151 50 |
| Note due April 5th, 1885 | 689 48 |
| Note due May 4th, 1885 | 689 48 |
| Note due May 19th, 1885 | 689 48 |
| Note due May 28th, 1885 | 974 60 |
| Note due June 4th, 1885 | 689 49 |
| Merchandise on open account, due and payable June 15th, 1885 | 186 70 |
| Merchandise on open account, due & payable July 15th, 1885 | 3,208 77 |
| 100 Merchandise on open account, due and payable August 1st, 1885 | 791 63 |

That said W. T. Tuffly has disposed of his property, in whole or in part, with intent to defraud his creditors; that the attachment now applied for is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

VERNON LEMAN.

Subscribed and sworn to before me this the 31st day of March, A. D. 1885, to certify which I hereunto set my hand and official seal.

[SEAL.] JOHN KENNEDY,
*Notary Public in and for Harris County, Texas.*

## EXHIBIT A.

NEW YORK, *Jan'y* 12, 1885, *as Feb'y* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| A | 7 | 1 | 22½ | Hamburg inserting | 4 | | 90 |
| B | 2 | 1 | 27 | | 6 | 1 | 62 |
| | 7 | 1 | 27 | | 8½ | 2 | 29 |
| C | 1 | 1 | 22½ | | 10 | 2 | 25 |
| | 2 | 1 | 18 | | 10½ | 1 | 89 |
| | 3 | 1 | 18 | | 11 | 1 | 98 |
| | 5 | 1 | 22½ | | 12 | 2 | 70 |
| | 6 | 1 | 17½ | | 12½ | 2 | 18 |
| | 9 | 1 | 18 | | 14 | 2 | 52 |
| 101 | | | | | | | |
| D | 2 | 1 | 18 | | 15 | 2 | 70 |
| | 3 | 1 | 9 | | 15½ | 1 | 40 |
| | 4 | 1 | 13½ | | 16 | 2 | 16 |
| E | 3 | 1 | 13½ | | 20 | 2 | 70 |
| | 6 | 1 | 7½ | | 23 | 1 | 73 |
| | 9 | 1 | 12½ | | 26 | 3 | 25 |
| F | 4 | 1 | 11⅞ | | 30 | 3 | 56 |
| A | 4 | 1 | 27 | do. edging | 2½ | | 68 |
| | 5 | 1 | 29 | | 3 | | 88 |
| | 7 | 1 | 58½ | | 4 | 2 | 34 |
| | 8 | 1 | 18 | | 4½ | | 81 |
| | 9 | 1 | 27 | | 5 | 1 | 35 |
| B | 1 | 1 | 22½ | | 5½ | 1 | 23 |
| | 2 | 2 | 49½ | | 6 | 2 | 98 |
| | 3 | 2 | 39½ | | 6½ | 2 | 56 |
| | 4 | 2 | 31 | | 7 | 2 | 17 |
| | 5 | 2 | 54 | | 7½ | 4 | 05 |
| | 6 | 3 | 49½ | | 8 | 3 | 96 |
| | 7 | 3 | 58⅛ | | 8½ | 4 | 94 |
| | 8 | 1 | 22½ | | 9 | 2 | 03 |
| C | 1 | 1 | 13 | | 10 | 1 | 30 |
| | 3 | 1 | 18 | | 11 | 1 | 98 |
| | 4 | 1 | 13½ | | 11½ | 1 | 55 |
| | 5 | 1 | 22½ | | 12 | 2 | 70 |
| | 6 | 1 | 13½ | | 12½ | 1 | 68 |
| | 8 | 1 | 13½ | | 13½ | 1 | 82 |
| | 9 | 1 | 13½ | | 14 | 1 | 89 |
| D | 2 | 3 | 35½ | | 15 | 5 | 36 |
| 102 | | | | | | | |
| | 7 | 1 | 9 | | 17½ | 1 | 58 |
| E | 3 | 1 | 9 | | 20 | 1 | 80 |
| | 5 | 1 | 9 | | 22 | 1 | 98 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 7 | 2 | 18 | | 24 | ---- | 4 | 32 |
| 8 | 1 | 8 | | 25 | ---- | 2 | |
| F 1 | 1 | 13½ | Hamburg edging | 27 | ---- | 2 | 64 |
| 4 | 1 | 7½ | | 30 | ---- | 2 | 32 |
| 6 | 1 | 13½ | | 32 | ---- | 4 | 32 |
| 7 | 1 | 7½ | | 33 | ---- | 2 | 46 |
| 9 | 1 | 9 | | 35 | ---- | 3 | 15 |
| G 2 | 1 | 9 | | 37 | ---- | 3 | 33 |
| H 1 | 1 | 9 | | 45 | ---- | 4 | 05 |
| J 3 | 1 | 9 | | 62 | ---- | 5 | 58 |
| 4 | 1 | 8½ | | 65 | ---- | 5 | 53 |
| H 6 | 1 | 9 | | 50 | ---- | 4 | 50 |
| K 8 | 1 | 4½ | | 90 | ---- | 4 | 05 |
| 1,330 | 3 | doz. | ladies solid-colored hose | 3 50 | ---- | 10 | 50 |
| 1,815 | 3 | | | 4 00 | ---- | 12 | 00 |
| 811 | 4 | bro. | Balb'n | 2 25 | ---- | 9 | 00 |
| | | | | | | 170 | 20 |

(Duplicate.)

NEW YORK, *January* 23, 1885, *as Feb'y* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 4131 | 1 | 16½ | emb'd net | 33 | 50 | ---- | $16 50 |
| 4132 | 1 | 16½ | | | | | |

(Duplicate.)

103 NEW YORK, *Feb'y 6th*, 1885, *as March* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| F | 1 | 64½ | beige. | | | | |
| E | 1 | 67 | | | | | |
| H | 1 | 67 | | | | | |
| A | 1 | 67½ | | | | | |
| | | | | 266 | 16½ | ---- | 43 93 |
| 101 | 1 | 33 | | | | | |
| 112 | 1 | 33 | figured do. | | | | |
| | | | | 66 | 32½ | ---- | 21 45 |
| Black | 1 | 57⅞ | albatross. | | | | |
| D | 1 | 56⅜ | | | | | |
| C | 1 | 49¾ | | | | | |
| B | 1 | 52 | | | | | |
| F | 1 | 54⅜ | | | | | |
| | | | | 270⅜ | 50 | ---- | 135 19 |
| B | 1 | 39⅞ | myosotis. | | | | |
| E | 1 | 39¾ | | | | | |
| D | 1 | 39⅜ | | | | | |
| Bl'k | 1 | 39⅞ | | | | | |
| | | | | 158⅞ | 57½ | ---- | 91 35 |
| F | 1 | 37⅛ | crepeline. | | | | |

| | | | | | |
|---|---|---|---|---|---|
| H | 1 | 36⅞ | | | |
| Black | 1 | 37⅛ | | | |
| | | | 111⅛ | 65 | 72 23 |
| B | 1 | 51¾ | nun's veiling. | | |
| C | 1 | 53¾ | | | |
| A | 1 | 47½ | | | |
| H | 1 | 53½ | | | |
| Black | 1 | 50½ | | | |
| N | 1 | 53 | | | |
| I | 1 | 53 | | | |
| | | | 363 | 16½ | 59 93 |
| 10 | 1 | 51 | met. bl'k cashmere, 55 | 33½ | 16 51 |
| 3468 | 1 | 43 | yds. bunting | 19 | 8 17 |
| 2560 | 1 | 43 | ex. | 25 | 10 75 |
| | 1 | 54¾ | D. W. | 37½ | 20 52 |
| | | | | | 482 03 |

(Duplicate.)

104 NEW YORK, *Feb.* 13, 1885.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | |
|---|---|---|---|---|---|
| 1 | 1 | 30–80 | met. reversed muslin | 45 | 13 88 |
| 16 | 1 | 32–30 | | 50 | 16 15 |
| 7715 | 1 | 28 | batiste. | | |
| 7728 | 1 | 26–50 | | | |
| 7714 | 1 | 26 | | | |
| 7711 | 1 | 28 | | | |
| 15206 | 1 | 28 | printed do. | | |
| | | | 136–50 | 32½ | 44 36 |
| 11727 | 1 | 52–80 | 4–4 p't'd organdie. | | |
| 11304 | 1 | 51–20 | | | |
| 11802 | 1 | 54–90 | 4–4 | | |
| | | | 158–90 | 35 | 55 62 |
| | | | | | 130 01 |
| | | | Add 1/12 for metres | | 10 54 |
| | | | | | 140 85 |
| 5 | 20 | 400 | check nainsook | 7 | 28 |
| 10 | 10 | 200 | | 8½ | 17 |
| 15 | 5 | 100 | | 11 | 11 |
| 20 | 5 | 99¾ | | 12½ | 12 47 |
| BB | 5 | 120 | | 14 | 16 80 |
| 41 | 3 | 72 | | 17 | 12 24 |
| 51 | 4 | 96 | | 19 | 18 24 |
| 61 | 5 | 120 | | 22½ | 27 |
| 8 | 20 | 400 | Victoria lawn | 7 | 28 |
| 9 | 15 | 360 | | 8½ | 30 60 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 29 | 10 | 200 | | 10 | | 20 |
| 49 | 10 | 200 | | 12 | | 24 |
| 69 | 5 | 120 | | 14 | | 16 80 |
| 79 | 5 | 120 | | 16½ | | 19 80 |
| 105 | | | | | | |
| 4 | 5 | 120 | India lawn | 12 | | 14 40 |
| 75 | 5 | 120 | | 16 | | 19 20 |
| 100 | 5 | 120 | | 19 | | 22 80 |
| 200 | 5 | 120 | | 22½ | | 27 |
| IN | 2 | 48 | Persian | 18 | | 7 20 |
| O | 2 | 48 | | 19 | | 9 12 |
| R | 2 | 48 | | 27½ | | 13 20 |
| T | 2 | 48 | | 40 | | 19 20 |
| | 3 | 143 | pique | 7½ | | 10 72 |
| R | 1 | 41½ | | 40 | | 16 60 |
| 3 | 1 | 56 | cord- do. | 12 | | 6 72 |
| 4 | 1 | 52½ | | 16 | | 8 40 |
| 10 | 1 | 41 | | 20 | | 8 20 |
| 72 | 1 | 52½ | Swiss satin c'k | 20 | | 10 50 |
| 86 | 2 | 102 | 19 fr. | 17½ | | 17 85 |
| x-1.4 | 2 | 60 | figured Swiss | 10 | | 6 |
| a-3.57 | 3 | 73 | | 12½ | | 9 12 |
| B-9 | 1 | 25 | | 15 | | 3 75 |
| 132 | 1 | 20 | | 37½ | | 7 50 |
| 146 | 1 | 20 | | 45 | | 9 |
| 200 | 1 | 20 | col'd | 47½ | | 9 50 |
| 206 | 1 | 20 | | 50 | | 10 |
| 220 | 1 | 20 | 70 fr. | 65 | | 13 |
| | 1 | 49½ | crazy cloth | 19 | | 9 41 |
| E | 1 | 19¾ | all-over tuck | 60 | | 11 85 |
| 150 | 5 | pr. | brown stenter book | 70 | | 3 50 |
| 150 | 20 | | bl'k | 70 | | 14 |
| 7 | 1 | 24 | blea. huck | 22 | | 6 38 |
| 106 | | | | | | |
| 527 | 2 | 80 | bro. drill | 17 | | 3 60 |
| 60 | 1 | 39 | | 25 | | 9 75 |
| 64 | 1 | 41 | stripe | 19 | | 7 84 |
| 2 | 1 | 51 | Hastings c'k | 25 | | 12 75 |
| SS | 1 | 47 | Brighton | 35 | | 16 54 |
| 5 | 1 | 52 | 40–2 pillow linen | 37½ | | 19 50 |
| 12 | 5 | 207 | printed linen lawn | 30 | | 62 17 |
| 8 | 3 | 122½ | | 19 | | 23 27 |
| 6 | 8 | 314 | | 15 | | 47 14 |
| 7 | 5 | 208 | wh-t- Union " | 15 | | 31 24 |
| 9 | 3 | 126 | | 21 | | 26 46 |
| 12 | 3 | 130 | | 27½ | | 35 75 |
| 18 | 2 | 85½ | | 37½ | | 32 06 |
| S | 1 | 29 | loom damask | 80 | | 23 40 |
| 19 | 1 | 42¾ | bleached " | 45 | | 19 24 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 12 | 1 | 46 | | | 60 | | 27 60 |
| 45 | 1 | 37½ 1⅝ | | | 77½ | | 29 06 |
| 1.34 | 2 | 40 Turkey " | | | 37½ | | 15 |
| 7.10 | 2 | 37 58 | | | 50 | | 18 50 |
| 990 | 1 | 19¾ | | | 67½ | | 13 34 |
| 10 | 1 | 20¾ cardinal " | | | 90 | | 18 67 |
| | 4 | 7–4 Turkey cloths | | 1 | | | 4 |
| | 4 | 8–4 | | 1 | 60 | | 6 40 |
| | 4 | 8–10 | | 2 | | | 8 |
| | 3 | col'd bord. loom | | 1 | 85 | | 5 55 |
| | 2 | 7–4 col'd Union | | 1 | 25 | | 2 50 |
| | 3 | 10–4 | | 1 | 90 | | 5 70 |
| | 3 | dz. col'd Un. doylies | | 1 | 25 | | 3 75 |
| | 6 | " loom " | | 1 | 20 | | 7 20 |
| 18 | 5 | ⅝ napkins | | 1 | 75 | | 8 75 |
| | | | | | | | 1,301 62 |

Duplicate.

107 NEW YORK, *February* 14, 1885, *as March* 15.

Messrs. W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

(Duplicate.)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 387 | 1 | 20–60 b'k Spanish net | | 1 | 50 | | 30 90 |
| 735 | 1 | 12–10 | | 2 | 50 | | 30 85 |
| 735 | 1 | 14 cream | | 2 | 50 | | 35 |
| 8648 | 1 | 22 lace | | | 40 | | 8 80 |
| 14 | 1 | 33 bl'k | | | 40 | | 13 20 |
| 5348 | 1 | 33 | | | 45 | | 14 85 |
| 663 | 1 | 42–90 | | | 18 | | 7 72 |
| 664 | 1 | 35 | | | 20 | | 7 |
| 13 | 1 | 34 | | | 32 | | 10 88 |
| 238 | 1 | 31–50 Oriental lace | | | 10 | | 3 15 |
| 218 | 1 | 36 | | | 12 | | 4 32 |
| 141 | 1 | 44 Torchon ins't'g | | | 6½ | | 2 86 |
| 4025 | 1 | 35–40 | | | 8½ | | 3 |
| 2066 | 1 | 44 | | | 12 | | 5 28 |
| 493 | 1 | 34 | | | 13⅓ | | 4 59 |
| 1619 | 1 | 41 | | | 14 | | 5 74 |
| 1611 | 1 | 48–50 | | | 20 | | 9 70 |
| 4687 | 1 | 41 | | | 25 | | 10 25 |
| 1162 | 1 | 42 | | | 25 | | 10 50 |
| 1176 | 1 | 45 | | | 30 | | 13 50 |
| 139 | 1 | 49–20 lace | | | 3 | | 1 48 |
| 120 | 1 | 42 | | | 4 | | 1 68 |
| 4712 | 1 | 39–80 | | | 5 | | 1 99 |

108

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 104 | 1 | 41–80 | | | 5 | | 2 09 |
| 103 | 1 | 41–80 | | | 5 | | 2 09 |

| | | | | | |
|---|---|---|---|---|---|
| 110 | 1 | 48 | 7 ---- | 3 | 36 |
| 137 | 1 | 44 | 7 ---- | 3 | 08 |
| 107 | 1 | 48 | 6 ---- | 2 | 88 |
| 183 | 1 | 44 | 9 ---- | 4 | 41 |
| 203 | 1 | 60–20 | 9 ---- | 3 | 61 |
| 197 | 1 | 38 | 10½ ---- | 3 | 99 |
| 262 | 1 | 38–40 | 12 ---- | 4 | 61 |
| 269 | 1 | 36–40 | 12½ ---- | 4 | 54 |
| 6068 | 1 | 44 | 13 ---- | 5 | 72 |
| 503 | 1 | 48–70 | 15 ---- | 7 | 30 |
| 10 | 1 | 34–80 | 17 ---- | 5 | 92 |
| 52 | 1 | 40–50 | 23 ---- | 9 | 32 |
| 2651 | 1 | 32 bl'k escl. | 35 ---- | 11 | 20 |
| 10487 | 1 | 22–10 | 35 ---- | 48 | 84 |
| 124 | 1 | 23 | 60 ---- | 13 | 20 |
| | | | | 332 | 80 |
| | | Add $\frac{1}{12}$ for metres | | 27 | 74 |
| | | | | 360 | 54 |

| | | | | | |
|---|---|---|---|---|---|
| 5496 | 1 | 36 Spanish lace | 16 ---- | 5 | 76 |
| 5700 | 1 | 36 cream | 11½ ---- | 4 | 14 |
| 5703 | 1 | 36 | 22 ---- | 7 | 92 |
| 1367 | 1 | 3 Val. | 50 ---- | 1 | 50 |
| 2603 | 1 | 3 | 1 05 ---- | 3 | 15 |
| 253 | 1 | 3 | 1 35 ---- | 4 | 05 |
| 11883 | 1 | 3 ins't'g | 55 ---- | 1 | 65 |
| 8495 | 1 | 3 | 55 ---- | 1 | 65 |
| 6784 | 4 | crochet lace | 11½ ---- | | 46 |
| 6822 | 8 | | 15 ---- | 1 | 20 |
| 6813 | 4 | | 17½ ---- | | 70 |

109

| | | | | | |
|---|---|---|---|---|---|
| | 6 | 150 Hernani | 30 ---- | 45 | |
| S | 1 | 27½ 72″ white silk illusion | 65 ---- | 17 | 87 |
| 150 | 1 | 26 36″ ivory | 27 ---- | 7 | 02 |
| CL | 1 | 24¾ " cream | 35 ---- | 8 | 66 |
| 150 | 1 | 27 col'd | 30 ---- | 8 | 10 |
| O1 | 1 | 14 4–4 Eng. crape | 60 ---- | 8 | 40 |
| 1110 | 6 | Net curtains | 1 25 ---- | 7 | 50 |
| 1112 | 4 | | 1 75 ---- | 7 | 00 |
| 1113 | 6 | | 2 25 ---- | 13 | 50 |
| 1090 | 4 | | 3 ---- | 12 | 00 |
| 1097 | 4 | | 3 75 ---- | 15 | |
| 4505 | 1 | 50 curtain net | 12 ---- | 6 | |
| 9264 | 1 | 59½ | 20 ---- | 11 | 90 |
| 9271 | 1 | 54½ | 23 ---- | 12 | 53 |
| 1025 | 1 | 52 | 28 ---- | 13 | 06 |
| 9246 | 1 | 40¾ | 30 ---- | 12 | 22 |
| 6164 | 1 | 38 ecru | 23 ---- | 8 | 74 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 4 | 1 | 27 | cheese-cloth | | 10 | | 10 55 |
| 4 | 1 | 25 | | | | | |
| 1 | 1 | 53½ | | | | | |
| | | 105½ | | | | | |
| 6876 | 1 | 4 | Swiss emb'd'y | | 25 | | 1 |
| 3295 | 1 | 4 | | | 35 | | 1 40 |
| 3176 | 1 | 3 | | | 40 | | 1 20 |
| 3301 | 1 | 4 | | | 40 | | 1 60 |
| 3247 | 1 | 4 | | | 45 | | 1 80 |
| 3240 | 1 | 3 | | | 45 | | 1 35 |
| 3181 | 1 | 3 | | | 50 | | 1 50 |
| 3280 | 1 | 3 | | | 50 | | 1 50 |
| 3217 | 1 | 3 | | | 50 | | 1 50 |
| 3300 | 1 | 3 | | | 55 | | 1 65 |
| 110 | | | | | | | |
| 3237 | 1 | 3 | | | 60 | | 1 80 |
| 3232 | 1 | 3 | | | 65 | | 1 95 |
| 6640 | 1 | 3 | | | 70 | | 2 10 |
| 6893 | 1 | 3 | | | 75 | | 2 25 |
| 3218 | 1 | 3 | | | 75 | | 2 25 |
| 3174 | 1 | 3 | | | 80 | | 2 40 |
| 3163 | 1 | 3 | | | 90 | | 2 70 |
| 3227 | 1 | 3 | | 1 | 20 | | 3 60 |
| 6638 | 1 | 3 | | 2 | 10 | | 6 30 |
| 4130 | 1 | 14½ | net | | 38 | | 5 51 |
| 4115 | 1 | 17¾ | | | 60 | | 8 87 |
| 4111 | 1 | 14 | | | 80 | | 11 40 |
| 2282 | 1 | 9 | all-over emb'd'y | 1 | 25 | | 11 25 |
| 7988 | 1 | 9 | | 1 | 75 | | 15 75 |
| 8442 | 1 | 9 | | 2 | 25 | | 20 25 |
| 1950 | 1 | 6–12 | inf 'ts' fancy hose | 1 | 50 | | 2 25 |
| 1954 | 1 | 6–12 | | 2 | 25 | | 3 37 |
| 600 | 8 | men's | | 1 | 75 | | 14 |
| 4434 | 8 | solid colors | | 2 | 25 | | 18 |
| 1845 | 5 | 6–12 | ribbed | 5 | 75 | | 2 88 |
| | 5½ | 6–12 | | 6 | 25 | | 3 12 |
| | 6 | 6–12 | | 6 | 75 | | 3 37 |
| | 6½ | 6–12 | | 7 | 25 | | 3 62 |
| | 7 | 6–12 | | 7 | 75 | | 3 88 |
| | 7½ | 6–12 | | 8 | 25 | | 4 12 |
| | 8 | 6–12 | | 8 | 75 | | 4 30 |
| | 8½ | 6–12 | | 9 | 25 | | 4 62 |
| 200 | 2 | b'n mixed | | | 90 | | 1 80 |
| 200 | 6 | ladies' f'cy | | 2 | | | 12 |
| 111 | | | | | | | |
| 417 | 3 | | | 1 | 75 | | 5 25 |
| 296 | 3 | | | 2 | 25 | | 6 75 |
| 1345 | 3 | solid colors | | 3 | 75 | | 11 25 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 3200 | 3 | | | | 3 | 50 | | 10 50 |
| 610 | 3 | | | | 1 | 75 | | 5 25 |
| 678 | 6 | B. Balb. | | | 4 | | | 24 |
| 1120 | 3 | | | | 6 | | | 18 |
| 1129 | 3 | Brit. lisle | | | 9 | | | 27 |
| 1925 | 6–12 | ladies' f'cy lisle | | | 7 | 50 | | 15 |
| 1935 | 6–12 | | | | | | | |
| 1930 | 6–12 | | | | | | | |
| 1920 | 6–12 | | | | | | | |
| 315–9 | 1 | sup'r Br. cot'n, ½ | | | | | | 2 |
| 9½ | 1 | | | | | | | 2 13 |
| 10 | 1 | | | | | | | 2 25 |
| 10½ | 1 | | | | | | | 2 37 |
| 11 | 1 | | | | | | | 2 50 |
| 908–6 | 1 | lisle gloves | | | | | | 2 |
| 715–6 | 1 | | | | | | | 3 50 |
| 790–6 | 1 | | | | | | | 2 75 |
| 860–6 | 1 | | | | | | | 6 |
| 895–8 | 1 | | | | | | | 7 50 |
| 765 | 1 | | | | | | | 6 |
| 1890 | 1½ | | | | 3 | 50 | | 5 25 |
| 1805 | 2 | | | | 2 | 25 | | 4 50 |
| 509 | 1 | | | | | | | 3 50 |
| 1825 | 1 | | | | | | | 5 50 |
| 826 | 1 | | | | | | | 6 |
| 1092 | 1 | | | | | | | 7 50 |
| 1800 | 1 | bl'k | | | | | | 2 25 |
| 719 | 1 | | | | | | | 4 50 |
| 112 | | | | | | | | |
| 1820 | 1 | | | | | | | 5 50 |
| 826 | 1 | | | | | | | 6 |
| 1092 | 1 | | | | | | | 7 50 |
| 10 | 1 | 20 A. O. tuck | | | | 32½ | | 6 50 |
| 390 | 5 | 10–10 Torbit quilt | | | 3 | | | 15 |
| 500 | 5 | | | | 4 | | | 20 |
| 125 | 5 | | | | 1 | 90 | | 9.50 |
| | 5 | 18″ cot'n draper | | | | 50 | | 2 50 |
| | 5 | 22″ | | | | 60 | | 3 |
| | 5 | 24 | | | | 65 | | 3 25 |
| | 5 | 27 | | | | 72½ | | 3 62 |
| x | 2 | 80 crash | | | | 9 | | 7 20 |
| 2 | 2 | 80 toweling | | | | 8½ | | 6 80 |
| 6–1 | 1 | 58 | | | | | | |
| 103 | 1 | 48 | | | | | | |
| | | 106 | | | | 15 | | 15 90 |
| 5 | 1 | 40 16 roll. crash | | | | 10½ | | 4 20 |
| 10 | 1 | 40 18 | | | | 11½ | | 4 60 |
| 25 | 1 | 40 20 | | | | 12½ | | 5 |
| | 5 | Turkey doylies | | | | 38 | | 1 90 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | 5 | | | 55 | ---- | 2 | 75 |
| | 5 | | | 80 | ---- | 4 | 00 |
| | 5 | 18 | 1 | 25 | ---- | 6 | 25 |
| | 20 | glass | | 50 | ---- | 10 | 00 |
| | 10 | | | 75 | ---- | 7 | 50 |
| G | 10 | dam'k | | 85 | ---- | 8 | 50 |
| | 5 | 24 | 1 | 75 | ---- | 8 | 75 |
| 11 | 6 | 17 x 36 loom dam'k towels | 1 | 75 | ---- | 10 | 50 |
| 113 | | | | | | | |
| 50 | 4 | 20 x 40 k. f. | 2 | 50 | ---- | 10 | |
| 114 | 4 | 22 x 45 | 3 | | ---- | 12 | |
| 55 | 1 | 22 x 40 dam'k | | | | 5 | |
| 125 | 4 | huck | | 75 | ---- | 3 | 00 |
| 203 | 2 | Turkish | 3 | 50 | ---- | 7 | |
| 104 | 1 | | | | | 4 | 25 |
| 7 | 6–12 | | 5 | 50 | ---- | 2 | 75 |
| 6 | 10 | 5–8 napkin | | 62½ | ---- | 6 | 25 |
| o | 5 | 3–4 h. s. handk'f | 2 | | ---- | 10 | |
| 1 | 2 | | 2 | 50 | ---- | 5 | 00 |
| 3 | 2 | | 3 | | ---- | 6 | |
| 30 | 2 | | 5 | 50 | ---- | 11 | |
| 93 | 3 | 4–8 | 1 | 50 | ---- | 4 | 50 |
| 95 | 2 | | 2 | | ---- | 4 | |
| 7 | 2 | | 2 | 37½ | ---- | 4 | 75 |
| 9 | 2 | | 3 | | ---- | 6 | |
| 24 | 2 | | 3 | 25 | ---- | 6 | 50 |
| 25 | 2 | | 4 | | ---- | 8 | 00 |
| 734 | 2 | mourning | 2 | | ---- | 4 | |
| 737 | 1 | | 2 | 45 | ---- | 2 | 45 |
| 570 | 1 | | | | | 3 | 25 |
| 404 | 1 | | | | | 2 | 12 |
| 67 | 1 | 51–50 met. bl'k cashmere, 55⅛ yds. | | 57½ | ---- | 32 | 13 |
| | | | | | | $1,359 | 27 |

114 NEW YORK, *February* 14, 1885.

Mr. W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co.

| | | | | | | |
|---|---|---|---|---|---|---|
| L O | 1 | 46¾ Richardson's linen | 20 | ---- | $9 | 35 |

Duplicate.

NEW YORK, *February* 14, 1885, *as March* 15.

Messrs. W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | |
|---|---|---|---|---|---|
| 905 | 1 | metropolitan plaiting | | 3 | 75 |
| 4001 | 1 | | | 5 | 25 |
| 217 | 1 | | | 6 | |

| | | | |
|---|---|---|---|
| 1146 | 1 | | 5 50 |
| 251 | 1 | | 8 50 |
| | | | $29 00 |

(Duplicate.)

NEW YORK, *Feb.* 16, 1885, *as March* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | |
|---|---|---|---|
| 172 | 1 | embroidered robe | 3 50 |
| 106 | 1 | | 4 50 |
| 161 | 1 | | 6 |
| 12984 | 1 | | 6 |
| 297 | 1 | | 7 50 |
| | | | 27 50 |

(Duplicate.)

115 NEW YORK, *Feb.* 20, 1885, *as April* 1*st.*

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | |
|---|---|---|---|---|---|
| 6103 | 1 | 36 ecru & wht. cott. lace | 6 | | 2 16 |
| 6106 | 1 | 36 | 13 | | 4 68 |
| 6108 | 1 | 36 col'd | 8 | | 2 88 |
| 6110 | 1 | 36 | 12½ | | 4 50 |
| 6137 | 1 | 36 | 10 | | 3 60 |
| 6140 | 1 | 36 | 10 | | 3 60 |
| 6141 | 1 | 36 | 12½ | | 4 50 |
| 6139 | 1 | 24 | 16½ | | 3 96 |
| 6171 | 1 | 36 ecru & gold | 10 | | 3 60 |
| 6152 | 1 | 36 tinsel | 15½ | | 5 58 |
| 6153 | 1 | 36 | 20 | | 7 20 |
| 6111 | 1 | 36 antique | 12½ | | 4 50 |
| 6113 | 1 | 24 | 20 | | 4 80 |
| 2141 | 1 | 36 ecru | 12½ | | 4 50 |
| 2143 | 1 | 24 | 20 | | 4 80 |
| 369 | 1 | metropolitan plaiting | | | 2 90 |
| 4880 | 1 | | | | 2 50 |
| 4798 | 1 | | | | 2 90 |
| 1135 | 1 | | | | 4 |
| 1139 | 1 | | | | 4 25 |
| 1164 | 1 | | | | 4 80 |

116

| | | | | | |
|---|---|---|---|---|---|
| 1787 | 3–12 | collars | 7 50 | | 1 87 |
| 1788 | 3–12 | | 8 75 | | 2 19 |
| 1785 | 3–12 | | 11 50 | | 2 88 |
| 1000 | 2 | linen do | 1 25 | | 2 50 |
| 904 | 3 | | 1 75 | | 5 25 |
| 1040 | 3 | | 1 40 | | 4 20 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1030 | 3 | | | | 1 | 40 | 4 | 20 |
| 1115 | 4 | | | | 2 | | 8 | |
| 1024 | 3 | | | | 1 | 75 | 5 | 25 |
| 26 B | 1 | cuffs | | | | | 1 | 25 |
| 19 | 3 | | | | 1 | 40 | 4 | 20 |
| 110 | 2 | | | | 1 | 85 | 3 | 70 |
| 517*c* | 1 | h. s. & emb'd handk'fs | | | | | 2 | 50 |
| 317 | 1 | | | | | | 2 | 75 |
| 11 | 1 | embroidered robe | | | | | 3 | 75 |
| 8514 | 1 | | | | | | 5 | |
| 8515 | 1 | dz. misses' bl'k hose | | | | | 6 | |
| 815 | 8 | fancy | | | 2 | 25 | 18 | |
| 4671 | 1 | | | | | | 1 | 37 |
| 4675 | 6 | solid color | | | 3 | 50 | 21 | |
| 4592 | 6 | dz. misses' solid-color hose | | | 1 | 62½ | 9 | 75 |
| 6753 | 4 | col'd Balb'n | | | 3 | 50 | 14 | |
| 1245 | 3 | ladies' bl'k | | | 4 | 50 | 13 | 50 |
| 90 | 3 | brilliant lisle | | | 6 | 50 | 19 | 50 |
| 105 | 1½ | | | | 6 | 50 | 9 | 75 |
| 1915 | 2 | 4–12 | | | 7 | 50 | 17 | 50 |
| 5006 | 1 | silk plaited | | | | | 12 | |
| 5010–10 | 1 | gloves | | | | | 9 | |
| 4010–10 | 1 | | | | | | 9 | |

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| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 4030 | 1 | | | | | | 12 | |
| 4075 | 1 | | | | | | 12 | |
| 29 | 1 | # 50 Saxony cord CK | | | | 10½ | 5 | 25 |
| 12 | ½ | doz. 20–46 knot-fringe towels | | | 10 | 00 | 5 | |
| | 1 | tidies | | | | | 10 | |
| 154 | 2 | 3–4 h'm'd & p't'd handk'fs | | | | 75 | 1 | 50 |
| 104 | 2 | | | | 1 | 05 | 2 | 10 |
| 1402 | 1 | | | | | | 2 | 50 |
| 652 | 1 | | | | | | 3 | 50 |
| A | 2 | 3–8 h. s. & p't'd | | | 1 | 25 | 2 | 50 |
| 601 | 1 | | | | | | 1 | 15 |
| 824 | 1 | | | | | | 1 | 15 |
| 665 | 5 | | | | 1 | 50 | 7 | 50 |
| 662 | 1 | | | | | | 1 | 50 |
| 179 | 1 | | | | | | 1 | 60 |
| 829 | 1 | | | | | | 1 | 85 |
| 483 | 1 | | | | | | 2 | |
| 669 | 1 | | | | | | 2 | 30 |
| 487 | 1 | | | | | | 2 | 35 |
| 260 | 1 | | | | | | 3 | |
| 492 | 1 | | | | | | 3 | 50 |
| 883 | 1 | 3–4 | | | | | 2 | 50 |
| 671 | 1 | | | | | | 2 | 75 |
| 767 | 1 | | | | | | 4 | |
| 35 | 1 | | | | | | 4 | 75 |
| 650 | 1 | ivory | | | | | 2 | 50 |

| | | | | | |
|---|---|---|---|---|---|
| 664 | 5 | cot. h'm'd & p't'd | 70 | | 3 50 |
| 2 | 1 | 55½ English plaid. | | | |
| 16 | 1 | 53½ | | | |
| 10 | 1 | 55½ | | | |
| | | —164½ | 20 | | 32 90 |
| 6 | 1 | 65′ | | | |
| 3 | 1 | 64½ | | | |
| 1 | 1 | 64′ | | | |
| | | —194 | 21 | | 40 74 |
| | | | | | 483 96 |

(Duplicate.)

118 NEW YORK, *Feb'y* 28, 1885, *as April 1st.*

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | |
|---|---|---|---|---|---|
| 124 | 1 | 22–50 met. oriental lace | 7 | | 1 57 |
| 216 | 1 | 36 | 8 | | 2 88 |
| 205 | 1 | 36 | 8½ | | 3 06 |
| 134 | 1 | 22–50 | 9 | | 2 03 |
| | | | | | 9 54 |
| | | Add 1/12 for metres | | | 79 |
| | | | | | 10 33 |
| 100–101 | 2 | 105 yds. manilla ck. | 10 | | 10 50 |
| Opera. | 5 | 264¾ silesia | 8 | | 21 18 |
| 2745 | 1 | 55 emb'd mohair. | | | |
| 2733 | 1 | 48 | | | |
| 2751 | 1 | 52 | | | |
| | | —155 | 27½ | | 42 62 |
| Bl'k | 1 | 59⅞ crepon, job | 40 | | 23 95 |
| 11–a | 1 | 54⅞ albatross | 50 | | 27 45 |
| | | | | | 136 03 |

(Duplicate.)

NEW YORK, *March* 4, 1885, *as April 1st.*

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

119

| | | | | | |
|---|---|---|---|---|---|
| 8508 | 2 | embroidered robes | 6 00 | | 12 00 |
| 8510 | 1 | | | | 7 25 |
| 24 | 1 | 29 nuns' veiling. | | | |
| 8 | 1 | 58 | | | |
| 22 | 1 | 56 | | | |
| 26 | 1 | 57 | | | |
| | | —200 216⅔ | 29 | | 62 83 |
| | | | | | 82 08 |

(Duplicate.)

NEW YORK, *March* 12, 1885, *as April* 1*st*.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | |
|---|---|---|---|---|---|---|
| 3070 | 3 | 97–20 | met. col'd silk lace---------- | 23 ---- | 22 | 35 |
| 3071 | 3 | 99 | ---------- | 18½---- | 18 | 31 |
| | | | | | 40 | 66 |
| | | | Add ½ for metres---------- | | 8 | 40 |
| | | | | | 44 | 06 |
| F. | 1 | 37⅛ | crepeline. | | | |
| G. | 1 | 32⅞ | | | | |
| | | 70 | ---------- ---------- | 65 ---- | 45 | 50 |
| | | | | | 89 | 56 |

(Duplicate.)

The foregoing petition and exhibit endorsed as follows: "No. 1327 C. L. Morrison, Herriman & Co. *vs.* W. T. Tuffly. Original petition and affidavit for attachment. Filed March 31, 1885. C. Dart, clerk."

120 *Verdict of Jury Written on Petition and Affidavit for Attachment.*

"We, the jury, find for plaintiffs debt and interest to date, nine thousand and thirty-one $\frac{33}{100}$ dollars ($9,031.33), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. MCCRAVEN, *Foreman*."

*Attachment Bond. Filed March* 31, '85.

THE STATE OF TEXAS, *County of Harris:*

MORRISON, HERRIMAN & CO. *vs.* W. T. TUFFLY.

In Circuit Court of the United States, Eastern District of Texas, at Galveston.

We, the undersigned, Morrison, Herriman & Co., as principals, and Wm. D. Cleveland and C. Lombardi and S. K. McIlhenny, as sureties, acknowledge ourselves bound to pay to W. T. Tuffly the sum of nineteen thousand dollars, conditioned that the above-bound Morrison, Herriman & Co., plaintiffs in attachment, against the said W. T. Tuffly, defendant, will prosecute their said suit to effect, and that they will pay all such damages and costs as shall be adjudged against them for wrongfully suing out such attachment.

Witness our hands this 31st day of March, A. D. 1885.

MORRISON, HERRIMAN & CO.,
By VERNON LEMAN, *Agent.*
WM. D. CLEVELAND.
C. LOMBARDI.
S. K. McILHENNY.

Approved.
C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

121 Endorsements: "No. 1327. Morrison, Herriman & Co. *vs.* W. T. Tuffly. Attachment bond. Filed March 31, 1885. C. Dart, clerk."

*Citation for W. T. Tuffly. Issued April 3rd, 1885.*

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon W. T. Tuffly, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof, to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the second day of November next, to answer the petition of Geo. A. Morrison & Jno. Herriman, composing the firm of Morrison, Herriman & Co., filed M'ch 31, '85 (cause No. 1327), against him, the said W. T. Tuffly, in an action of debt on promissory notes and open account, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice [SEAL.] of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this third day of April, in the year of our Lord eighteen hundred and eighty-five, and of American Independence the one hundred and ninth year.

122

C. DART,
*Clerk Eastern District Texas, at Galveston,*
By W. L. HANSCOM, *Deputy.*

*Marshal's Return.*

Received this writ on the 3d day of April, 1885, and I executed the same on the 4th day of April, 1885, by delivering to the within-named defendant, in Houston, in person, a true copy of this writ and a copy of the petition certified by the clerk of this court.

J. G. TRACY,
*U. S. Marshal.*

Endorsements: "C. L., No. 1327. Morrison, Herriman & Co. *vs.* W. T. Tuffly. Issued 3d day of April, A. D. 1885. C. Dart, clerk U. S. court, E. D. T., Galveston, by W. L. Hanscom, deputy. Returned and filed April 6th, 1885. C. Dart, cl'k, by Geo. C. Rives, dept."

*Order.*

From Minutes, March Term, April 17, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

On this 17th day of April, 1885, came on to be heard the application of the plaintiffs in this cause for an order directing the sale of the personal property seized under writ of attachment issued in this cause; and, it appearing to the court from said application and the affidavit of the plaintiffs' agent and the certificate of the marshal in support thereof, and from the evidence, that the keeping of
123 said property until the trial of this cause will necessarily be attended with such expenses and deterioration in the value of the property as greatly to lessen the amount likely to be realized therefrom, and that it is to the interest of all parties to the cause that said property be sold as soon as possible, the court doth order, adjudge, and decree that said property, to wit, the stock of dry goods now in the store in the Burns building, on the corner of Main and Prairie streets, in the city of Houston, Texas, and also the furniture and fixtures and all personal property of whatever kind in said said store levied upon and now in the hands of the marshal, as fully set forth in his return upon the said writ of attachment on file herein, be sold by the marshal as under execution, and the time for the advertisement of said sale is hereby fixed at five days. In addition to the posting of notices in the usual form, the marshal is hereby authorized and directed to cause a brief notice of the time, place, and terms of said sale to be published in the Houston Daily Post and The Galveston Daily News, and will include the expense thereof in the costs. The clerk of this court will issue the necessary order of sale, which the marshal will execute and make return thereof, with the proceeds of said sale, according to the statutes in such cases made and provided, and pay said proceeds into the registry of the court.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

Upon application of the plaintiffs, by their attorney, the marshal is permitted to amend his return upon the writ of attachment issued in this case.

124 *Default Judgment.*

From Minutes, November Term, Nov. 6, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

On this day came the plaintiffs, by their attorney, and the defendant, having been duly served with process, came not, but wholly made default; wherefore it is considered and adjudged by the court that judgment by default be, and is hereby, entered against the said defendant, and that the plaintiffs have and recover from the said defendant the damages by them sustained by reason of the non-payment of the demand sued on, and that a jury be impanelled at some future day of the term to inquire thereof.

*Final Judgment.*

From Minutes, Nov. 17th, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

On this 17th day of November, 1885, this cause again came on to be heard, and the plaintiffs appeared by attorney and announced themselves ready to execute the writ of inquiry heretofore awarded; and thereupon came a jury of twelve good and lawful men, to wit, Bonner N. McCraven and eleven others, who, being duly elected, tried, impanelled, and sworn, and having heard the evidence and charge of the court, returned the following verdict:

"We, the jury, find for plaintiffs, debt and interest to date, nine thousand and thirty-one $\frac{33}{100}$ dollars ($9,031.33), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

125 It was thereupon ordered, adjudged and decreed by the court, in accordance with the verdict, that the plaintiffs, George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., do have and recover of and from the defendant, W. T. Tuffly, the sum of nine thousand and thirty-one & $\frac{33}{100}$ dollars ($9,031.33), with interest thereon at the rate of eight per cent. per annum from date thereof, and all costs in this behalf incurred, for all which let execution issue.

And it further appearing to the court that by virtue of writ of

attachment in this cause certain goods, wares, and merchandise and other personal property of the defendant situated in the store on the corner of Main and Prairie streets, in the city of Houston, Texas, were, on the 31st day of March, 1885, seized and levied on by the marshal of the eastern district of Texas, as fully shown by his return on said writ on file herein, and that plaintiffs, by virtue of said levy, acquired a lien upon said property, and that thereafter, to wit, on the 27th day of April, 1885, under order of sale, duly issued out of this court and directed to the marshal, he sold the said property and paid the proceeds thereof, amounting to eleven thousand six hundred dollars, together with the sum of forty-three & $\frac{70}{100}$ dollars, found on hand at the time of levying said writ, into the registry of this court, and that the plaintiffs have a valid lien upon said fund now in the court, it was further ordered, adjudged, and decreed that plaintiffs' said lien be foreclosed, and that said proceeds of sale be applied to the satisfaction of this judgment and all costs of court, and that the same be paid to the attorney of record for plaintiffs herein, whose receipt shall be sufficient voucher to the clerk therefor.

126 From Minutes, November Term, Nov. 18th, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

Upon application of J. G. Tracy, late United States marshal for the eastern district of Texas, and upon proof being made to the satisfaction of the court, it is ordered that his account of expenses incurred and paid by him, as marshal, in this suit, aggregating the sum of six hundred and eight $\frac{58}{100}$ dollars ($608.58), be, and the same is hereby, approved and the said amount taxed as costs in the case.

*Original Petition in Case No.* 1328, *Dunham, Buckley & Co. vs. W. T. Tuffly, with Affidavit and Verdict of Jury. Filed March* 31, 1885.

In the Circuit Court of the United States for the Eastern District of Texas, in the Fifth Circuit, Holding Sessions at Galveston, Texas.

To the honorable the judges of said court:

Your petitioners, James H. Dunham, William Buckley, and Charles H. Webb, who, in the matters hereinafter set forth, were and still are copartners under the firm name and style of Dunham, Buckley and Company, at New York, in the State of New York, and hereinafter styled plaintiffs, complaining of W. T. Tuffly, merchant at Houston, Texas, respectfully represent that plaintiffs reside at New York, in the county and State of New York, and that they are all citizens of the State of New York; that the defendant resides at Houston, in the county of Harris and State of Texas, and that he is a citizen of the State of Texas; that heretofore, to wit, on
127 the 14th day of February, 1885, plaintiffs, at the special instance and request of defendant, sold and delivered to the

defendant certain goods, wares, and merchandise. In consideration whereof defendant then undertook, promised, and agreed to pay plaintiffs, at the times hereinafter set forth, so much money as the said goods, wares, and merchandise were reasonably worth, and that the same were, at the time of sale and delivery thereof, reasonably worth the sums charged therefor, amounting in the aggregate to one thousand and seven & $\frac{93}{100}$ dollars ($1,007.93); that defendant undertook, promised, and agreed to pay plaintiffs said sum of money for the reasonable value of said goods at the following times, to wit: On May 1st, 1885, the sum of one hundred and sixty-six $\frac{68}{100}$ dollars ($166.68), and on July 1st, 1885, the remainder thereof, amounting to the sum of eight hundred and forty-one & $\frac{25}{100}$ dollars ($841.25), and that said sums of money will be due to plaintiffs from defendant on said last-named dates, respectively; that defendant is justly indebted to plaintiffs in said sums of money, which will be due on said last-named dates, respectively, and amounting in the aggregate to $1,007.93, and that he has disposed of his property, in whole or in part, with intent to defraud his creditors. Wherefore plaintiffs pray for process of attachment. Plaintiffs further say that the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

Wherefore plaintiffs sue and pray for citation, attachment, and all other proper process, and upon hearing hereof and after their said debt shall have all become due for judgment against
128 defendant therefor and for costs of suit and for general relief.
And, as in duty bound, petitioners will ever pray.

C. ANSON JONES,
*Attorney for Plaintiffs.*

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, the undersigned, John Kennedy, a notary public in and for the county of Harris, in the State of Texas, on this day personally appeared H. W. Chapman, to me known, who, being by me duly sworn, on oath says that he is the agent of the plaintiffs in the foregoing petition, composing the firm of Dunham, Buckley & Co., and authorized to make this affidavit in their behalf. He further says that the statements contained in the above and foregoing petition are true; that the defendant, W. T. Tuffly, is justly indebted to the plaintiffs, Dunham, Buckley & Company, in the sum of one thousand and seven & $\frac{93}{100}$ dollars ($1,007.93), and that the same will be due and payable as follows, to wit: One hundred and sixty-six & $\frac{68}{100}$ dollars ($166.68) on May 1st, 1885, and eight hundred and forty-one & $\frac{25}{100}$ dollars ($841.25) on July 1st, 1885; that said W. T. Tuffly has disposed of his property, in whole or in part, with intent to defraud his creditors; that the attachment now applied for is not sued out for the purpose of injuring or harassing the defendant, and that plaintiffs will probably lose their debt unless such attachment is issued.

H. W. CHAPMAN.

Subscribed and sworn to before me this 28 day of March, A. D. 1885, to certify which I hereto set my hand and official seal.

JOHN KENNEDY,

[SEAL.] *Notary Public in and for Harris County, Texas.*

129 Endorsements: "No. 1328, C. L. Dunham, Buckley & Co. *vs.* W. T. Tuffly. Original petition and affidavit for attachment. Filed March 31, 1885. C. Dart, clerk."

Verdict of jury endorsed on petition: "We, the jury, find for plaintiffs, debt, one thousand and seven $\frac{93}{100}$ dollars ($1,007.93), and that the property seized under the writ of attachment and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court. Bonner N. McCraven, foreman."

*Attachment Bond. Filed March* 31, 1885.

In the Circuit Court of the U. S., Eastern Dist. of Texas, at Galveston.

DUNHAM, BUCKLEY & CO.
*vs.*
W. T. TUFFLY.

THE STATE OF TEXAS, *County of Harris:*

We, the undersigned, Dunham, Buckley & Co., as principals, and W. L. Foley and John Kennedy, as sureties, acknowledge ourselves bound to pay to W. T. Tuffly the sum of two thousand and twenty-five dollars, conditioned that the above-bound Dunham, Buckley & Co., plaintiffs in attachment against the said W. T. Tuffly, defendant, will prosecute their said suit to effect, and that they will pay all such damages and costs as shall be adjudged against them for wrongfully suing out such attachment.

Witness our hands this 28th day of March, 1885.

DUNHAM, BUCKLEY & CO.,
By H. W. CHAPMAN, *Agent.*
W. L. FOLEY.
JOHN KENNEDY.

130 Approved.

C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

Endorsements: "No. 1328, C. L. Dunham, Buckley & Co. *vs.* W. T. Tuffly. Attachment bond. Filed March 31, 1885. C. Dart, clerk."

*Citation. Issued April* 3, 1885.

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon W. T. Tuffly, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof, to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the second day of November next, to answer the petition of Jas. H. Dunham, Wm. Buckley, & Chas. H. Webb, composing the firm of Dunham, Buckley & Co., filed M'ch 31, '85 (cause No. 1328), against him, the said W. T. Tuffly, in an action of debt on open account in the sum of $1,007.93, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 3d day of April, in the year of our Lord eighteen hundred and eighty-five, and of American Independence the one hundred and ninth.

[SEAL.]

131

C. DART,
*Clerk Eastern District Texas, at Galveston,*
By W. L. HANSCOM, *Deputy.*

*Marshal's Return.*

Received this writ on the 3d day of April, 1885, and I executed the same on the 4th day of April, 1885, by delivering to the within-named defendant, in Houston, in person a true copy of this writ and a copy of the petition, certified by the clerk of this court.

J. G. TRACY,
*U. S. Marshal.*

Endorsements: "C. L., No. 1328. Dunham, Buckley & Co. *vs.* W. T. Tuffly. Issued 3d day of April, A. D. 1885. C. Dart, clerk U. S. court, E. D. T., Galveston, by W. L. Hanscom, deputy. Returned and filed April 6, 1885. C. Dart, clerk, by Geo. C. Rives, dept."

*Default Judgment.*

From Minutes, November Term, November 6th, 1885.

DUNHAM, BUCKLEY & Co.
*vs.*
W. T. TUFFLY. } 1328.

On this day came the plaintiffs, by their attorney, and the defendant, having been duly served with process, came not, but wholly

made default; wherefore it is considered and adjudged by the court that judgment by default be, and is hereby, entered against the said defendant, and that the plaintiffs have and recover from the said defendant the damages by them sustained by reason of the non-payment of the demand sued on.

It is further ordered that a jury be impaneled at some future day of the term to inquire of the said damages.

132 *Final Judgment.*

From Minutes, November Term, November 17th, 1885.

DUNHAM, BUCKLEY & Co. *vs.* W. T. TUFFLY. } 1328.

On this 17th day of November, 1885, this cause again came on to be heard, and the plaintiffs appeared, by their attorney, and announced themselves ready to execute the writ of inquiry heretofore awarded; and thereupon came a jury of twelve good and lawful men, to wit, Bonner N. McCraven and eleven others, who, being duly elected, tried, impaneled, and sworn, and having heard the evidence and charge of the court, returned the following verdict:

"We, the jury, find for plaintiffs, debt, one thousand and seven $\frac{93}{100}$ dollars ($1,007.93), and that the property seized under the writ of attachment and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

It was thereupon ordered, adjudged, and decreed by the court, in accordance with the verdict, that the plaintiffs, James H. Dunham, William Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., do have and recover of and from the defendant, W. T. Tuffly, the sum of one thousand and seven $\frac{93}{100}$ dollars ($1,007.93), with interest thereon, at the rate of eight per cent. per annum, from date hereof, and all costs in this behalf incurred; for all which let execution issue.

And it further appearing to the court that, by virtue of writ of attachment in this cause, certain goods, wares, and merchandise and other personal property of the defendant, situated in the store
133 on the corner of Main and Prairie streets, in the city of Houston, Texas, were, on the 31st day of March, 1885, seized and levied on by the marshal of the eastern district of Texas, as fully shown by his return on said writ, on file herein, and that plaintiffs, by virtue of said levy, acquired a lien upon said property, and that thereafter, to wit, on the 27th day of April, 1885, under order of sale duly issued out of this court and directed to the marshal, he sold the said property and paid the proceeds thereof, amounting to eleven thousand six hundred dollars, together with the sum of forty-three

& $\frac{70}{100}$ dollars found on hand at the time of levying said writ, into the registry of this court, and that the plaintiffs have a valid lien upon said fund now in the court, it was further ordered, adjudged, and decreed that plaintiffs' said lien be foreclosed, and that the balance of said proceeds of sale, after satisfying the judgment and costs in case No. 1327 on the law docket of this court, entitled Morrison, Herriman & Co. *vs.* W. T. Tuffly, the levy in this case being made subject to the levy in said case No. 1327, or so much of the balance of said proceeds as may be sufficient to pay the same, be applied to the satisfaction of this judgment and all costs of court, and that the same be paid to the attorney of record for plaintiffs, whose receipt shall be a sufficient voucher to the clerk for such payment.

DUNHAM, BUCKLEY & Co.
*vs.*
W. T. TUFFLY. } 1328.

Upon application of J. G. Tracy, late United States marshal for the eastern district of Texas, and upon proof being made to the satisfaction of the court, it is ordered that an allowance of thirty-eight dollars be made to him for the services specified in the application, and the said amount is hereby taxed as costs in the case.

134 *Original Petition and Affidavit for Attachment in Case No.* 1329, *W. H. Lyon & Co. v. W. T. Tuffly. Filed March* 31*st*, 1885.

In the Circuit Court of the United States for the Eastern District of Texas, in the Fifth Circuit, Holding Sessions at Galveston, Texas.

To the honorable the judges of said court:

Your petitioners, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, who, in the matters hereinafter set forth, were and still are copartners under the firm name and style of William H. Lyon and Company, at New York, in the State of New York, and hereinafter styled plaintiffs, complaining of W. T. Tuffly, merchant, at Houston, in the county of Harris and State of Texas, respectfully represent—

That plaintiffs reside at the city of New York, in the county and State of New York, and are all citizens of the State of New York; that the defendant resides in the county of Harris, in the State of Texas, and is a citizen of the State of Texas.

That heretofore, to wit, on the twentieth day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, five months after date thereof, the sum of five hundred and seventy-six dollars and thirty-six cents ($576.36), a copy of which note is hereto annexed, marked Exhibit B, and is made a part of this petition, which note became

due and payable on the twenty-third day of March, A. D. 1885; yet to pay the same or any part thereof, though long since due
135 and unpaid, and though payment thereof has been demanded, defendant has hitherto failed and refused and still fails and refuses, to plaintiffs' damage five hundred and seventy-six dollars and thirty-six cents ($576.36).

That heretofore, to wit, on the tenth day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, six months after date thereof, the sum of five hundred and seventy-six dollars and thirty-seven cents, a copy of which note is annexed hereto and marked "Exhibit A," and is made a part of this petition; which said note will be due and payable on the thirteenth day of April, A. D. 1885.

That, heretofore, to wit, on the fifth day of November, A. D. 1884, and on divers days subsequent thereto, at the several times specified in the invoices hereto annexed, marked Exhibits "C," "D," and "E," and made a part of this petition, plaintiffs, at the special instance and request of defendant, sold and delivered to defendant certain goods, wares, and merchandise, in consideration whereof defendant then undertook, promised, and agreed to pay plaintiffs, at the times hereinafter set forth, so much money as the said goods, wares, and merchandise were reasonably worth, and that the same were, at the time of the sale and delivery thereof, reasonably worth the sums charged therefor, amounting in the aggregate to one hundred and twenty-six dollars and eighty-five cents ($126.85); that defendant undertook, promised, and agreed to pay to plaintiffs said sum of money for the reasonable value of said goods at the following times, to wit: On the fifth day of May, A. D. 1885, the sum of forty dollars ($40.00); on the twelfth day of May, A. D. 1885,
136 the sum of six dollars ($6.00), and on the second day of June, A. D. 1885, the sum of eighty dollars and eighty-five cents; and that said sums of money will be due to plaintiffs from defendant on said last-named dates, respectively.

That defendant is justly indebted to plaintiffs in said sums of money, due and to become due as hereinbefore set forth, amounting in the aggregate to twelve hundred and seventy-nine dollars and fifty-eight cents, and that he has disposed of his property, in whole or in part, with intent to defraud his creditors; wherefore plaintiffs pray for process of attachment. Plaintiffs further say that the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

Wherefore plaintiffs sue and pray for citation, attachment, and all other process and, upon hearing hereof and after their said debt shall all have become due, for judgment against defendant therefor and for costs of suit and for general relief.

And, as in duty bound, petitioners will ever pray.

C. ANSON JONES,
*Attorney for Plaintiffs.*

EXHIBIT "A."

$576.37. HOUSTON, TEX., *Oct.* 10*th*, 1884.

Six months after date I promise to pay to the order of Wm. H. Lyon & Co. five hundred seventy-six and $\frac{37}{100}$ dollars at the City Bank of Houston, value received.

W. T. TUFFLY.

Due Ap'l 13, '85.
(Copy.)

137 EXHIBIT "B."

$576.36. HOUSTON, TEX., *Oct.* 20*th*, 1884.

Five months after date I promise to pay to the order of Wm. H. Lyon & Co. five hundred seventy-six and $\frac{36}{100}$ dollars at the City Bank of Houston, value received.

W. T. TUFFLY.

Due March 23, '85.
(Copy.)

EXHIBIT "C."

NEW YORK, *Nov.* 5*th*, 1884.

W. T. Tuffly, Houston, Texas, bought of Wm. H. Lyon & Co., importers & jobbers of fancy goods, notions, ribbons, hosiery, gloves, white goods, cashmeres, flannels, silks, &c., Nos. 483 & 485 Broadway.

Terms, 6 mos.
(Duplicate.)

1 dz. 116 graded jerseys, 40 ..... 40 00

EXHIBIT "D."

NEW YORK, *Nov.* 12*th*, 1884.

W. T. Tuffly, Houston, Tex., bought of Wm. H. Lyon & Co., importers & jobbers of fancy goods, notions, ribbons, hosiery, gloves, white goods, cashmeres, flannels, silks, &c., Nos. 483 & 485 Broadway.

Terms, 6 mos.
(Duplicate.)

1 gross 1080 6½ p'rl & steel buttons, 6.00 ..... 6 00

138 EXHIBIT "E."

NEW YORK, *Dec. 2nd*, 1885.

W. T. Tuffly, Houston, Tex., bought of Wm. H. Lyon & Co., importers & jobbers of fancy goods, notions, ribbons, hosiery, gloves, white goods, cashmeres, flannels, silks, &c., Nos. 483 and 485 Broadway.

Terms, 6 mos.
(Duplicate.)

| | | | |
|---|---|---|---|
| 1 dz. | belts | | 3 50 |
| 1 " | 956 " | | 3 00 |
| 4 p'c's | 5 champion sat. ribbon, | 1.15 | 4 60 |
| 14 " | 7 " " " | 1.35 | 18 90 |
| 17 " | 9 " " " | 1.60 | 27 20 |
| 11 " | 12 " " " | 2.15 | 23 65 |
| | | | 80 85 |

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, the undersigned, John Kennedy, a notary public in and for the county of Harris, in the State of Texas, on this day personally appeared Vernon Leman, to me known, who, being by me duly sworn, on oath says that he is the agent of the plaintiffs in the foregoing petition, composing the firm of William H. Lyon and Company, and authorized to make this affidavit in their behalf. He further says that the statements contained in the above and foregoing petition are true; that the defendant, W. T. Tuffly, is justly indebted to the plaintiffs, Wm. H. Lyon & Co., in the sum of twelve
139 hundred and seventy-nine dollars and fifty-eight cents, due and to become due as follows, to wit: $576.36 by note due on March 27th, 1885; $576.37 by note due on April 13th, 1885; $40.00 due on May 5th, 1885; $6.00 on May 12th, 1885, and $80.85 due on June 2d, 1885; that said W. T. Tuffly has disposed of his property, in whole or in part, with intent to defraud his creditors; that the attachment now applied for is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

VERNON LEMAN.

Subscribed and sworn to before me this the 31 day of March, A. D. 1885, to certify which I hereunto set my hand and official seal.

[SEAL.] JOHN KENNEDY,
*Notary Public in and for Harris County, Texas.*

Endorsements: "No. 1329, C. L. W. H. Lyon & Co. *vs.* W. T. Tuffly. Original petition and affidavit for attachment. Filed March 31st, 1885. C. Dart, clerk."

*Verdict of Jury Written on Petition.*

"We, the jury, find for plaintiffs, debt and interest to date, thirteen hundred and forty-seven $\frac{17}{100}$ dollars ($1,347.17), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

140 *Attachment Bond in Case* 1329. *Filed March* 31, '85.

In the Circuit Court of the United States, Eastern District of Texas, at Galveston.

WM. H. LYON & CO.
*vs.*
W. T. TUFFLY.

THE STATE OF TEXAS,
*County of Harris.*

We, the undersigned, Wm. H. Lyon & Co., as principal, and W. L. Foley and Thos. R. Franklin, as sureties, acknowledge ourselves bound to pay to W. T. Tuffly the sum of twenty-six hundred dollars ($2,600.00), conditioned that the above-bound Wm. H. Lyon & Co., plaintiffs in attachment against the said W. T. Tuffly, defendant, will prosecute their said suit to effect, and that they will pay all such damages and costs as shall be adjudged against them for wrongfully suing out such attachment.

Witness our hands this 31st day of March, 1885.

WM. H. LYON & CO.,
By VERNON LEMAN, *Agent.*
W. L. FOLEY.
THOS. R. FRANKLIN.

Approved.
C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

Endorsements: "C. L., 1329. Wm. H. Lyon & Co. to W. T. Tuffly. Attachment bond. Filed March 31, '85. C. Dart, clerk."

141 *Citation for W. T. Tuffly in Case No.* 1329, *Wm. H. Lyon & Co. vs. W. T. Tuffly. Issued April* 3, 1885.

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon W. T. Tuffly, if to be found in your district, to be and appear before the honorable circuit

court of the United States, at the next term thereof, to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the second day of November next, to answer the petition of Wm. H. Lyon, Jas. O. Carpenter, & Joseph H. T. Martin, composing firm of Wm. H. Lyon & Co., filed M'ch 31, '85 (cause No. 1329), against him, the said W. T. Tuffly, in an action of debt on promissory notes and open account, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 3rd day of April, in the year of our Lord eighteen hundred and eighty-five, and of American Independence the one hundred and ninth year.

[SEAL.]

C. DART,
*Clerk Eastern District Texas, at Galveston,*
By W. L. HANSCOMB, *Deputy.*

142 *Marshal's Return on Citation.*

Received this writ on the 3rd day of April, 1885, and I executed the same on the 4th day of April, 1885, by delivering to the within-named defendant, in Houston, in person, a true copy of this writ and a copy of the petition, certified by the clerk of this court.

J. G. TRACY.

Endorsements on citation: "C. L., No. 1329. Wm. H. Lyon *vs.* W. T. Tuffly. Issued 3d day of April, A. D. 1885. C. Dart, clerk U. S. court, E. D. T., Galveston, by W. L. Hanscom, deputy. Returned & filed April 6th, 1885. C. Dart, clerk, by Geo. C. Rives, dept."

*Default Judgment.*

From Minutes, Nov. 6th, 1885.

WM. H. LYON & CO.
*vs.*
W. T. TUFFLY. } 1329.

On this day came the plaintiffs, by their attorney, and defendant, having been duly served with process, came not, but wholly made default; wherefore it is considered and adjudged by the court that judgment by default be, and is hereby, entered against the said defendant, and that plaintiffs have and recover from the said defendant the damages by them sustained by reason of the non-payment of the demand sued on. It is further ordered that a jury be impaneled at some future day of the term to inquire of the said damages.

143 *Final Judgment.*

From Minutes, Nov. 17th, 1885.

W. H. LYON & Co.
*vs.*
W. T. TUFFLY. } 1329.

On this 17th day of November, 1885, this cause again came on to be heard, and the plaintiffs appeared by attorney and announced themselves ready to execute the writ of inquiry heretofore awarded; and thereupon came a jury of twelve good and lawful men, to wit, Bonner N. McCraven and eleven others, who, being duly elected, tried, impaneled and sworn, and having heard the evidence and charge of the court, returned the following verdict:

*Verdict.*

"We, the jury, find for the plaintiffs, debt and interest to date, thirteen hundred and forty-seven $\frac{17}{100}$ dollars ($1,347.17), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

It was thereupon ordered, adjudged, and decreed by the court, in accordance with the verdict, that the plaintiffs, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon and Company, do have and recover of and from the defendant, W. T. Tuffly, the sum of thirteen hundred and forty-seven dollars and seventeen cents ($1,347.17), with interest thereon at the rate of eight per cent. per annum from date hereof, and all costs in this behalf incurred, for all which let execution issue.

And it further appearing to the court that by virtue of writ of attachment in this cause certain goods, wares, and merchandise and other personal property of the defendant situated in the store on the corner of Main and Prairie streets, in the city of Houston,
144 Texas, were, on the 31st day of March, 1885, seized and levied on by the marshal of the eastern district of Texas, as fully shown by his return on writ on file herein, and that plaintiffs by virtue of said levy acquired a lien upon said property, and that thereafter, to wit, on the 27th day of April, 1885, under order of sale, duly issued out of this court and directed to the marshal, he sold the said property and paid the proceeds thereof, amounting to eleven thousand six hundred dollars, together with the sum of forty-three and seventy-one-hundredths dollars, found on hand at the time of levying said writ, into the registry of this court, and that the plaintiffs have a valid lien upon said fund now in the court, it was

further ordered, adjudged, and decreed that plaintiffs' said lien be foreclosed, and that the balance remaining of the said proceeds of sale after the payment of the judgments and costs in case No. 1327 on the docket of this court, entitled Morrison, Herriman & Co. *vs.* W. T. Tuffly, and No. 1328, entitled Dunham, Buckley & Co. *vs.* W. T. Tuffly, the levy in this case being made subject to the levies in said cases Nos. 1327 & 1328, be applied to the satisfaction *pro tanto* of this judgment and all costs of court herein, and that the same be paid to the attorney of record for plaintiffs herein, whose receipt shall be a sufficient voucher to the clerk for such payment.

And it further appearing to the court that by virtue of the writ of attachment issued in this cause the marshal of the eastern district of Texas did, on the 31st day of March, 1885, levy upon and seize the following real estate, to wit: A one-half interest in blocks numbers one hundred and twenty-six (126), one hundred and twenty-seven (127), one hundred and thirty-one (131), one hundred and thirty-two (132), 133, one hundred and thirty-four (134), in
145 "Ryan's Addition" to the city of Houston; lots eleven (11), twelve (12), thirteen (13), and fourteen (14), in block two (2), in "Johnson's Addition" to the city of Houston, and block number sixty-two (62) in "Baker's Addition," of subdivision of lot thirty-five (35) in the O. Smith survey, all in Harris county, Texas, and that by virtue of said levy plaintiffs acquired, on March 31, 1885, a lien upon the said real estate, it was further adjudged and decreed that said lien be foreclosed, and that an order of sale shall issue to the marshal directing him to seize and sell the same as under execution in satisfaction of this judgment, and if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money or any balance thereof remaining unpaid out of any other property of the defendant as in case of ordinary executions.

WM. H. LYON & CO.
*vs.*
W. T. TUFFLY. } 1329.

Upon application of J. G. Tracy, late United States marshal for the eastern district of Texas, and upon proof being made to the satisfaction of the court, it is ordered that an allowance of thirty-eight dollars be made to him for the services specified in the application, and the said amount is hereby taxed as costs in the case.

146 The proof showed that on the 26th of March, 1884, W. T. Tuffly and R. W. McLin were and for some time prior thereto had been copartners in the business of selling staple and fancy dry goods at Houston, Texas, under the firm name and style of R. W. McLin & Co., and that on March 26, 1884, said copartnership was dissolved by the death of R. W. McLin. There was also proof tending to show that the interest of R. W. McLin in said partnership business was community property of himself and his deceased wife, Christine E. McLin—that is to say, property acquired by the joint industry and skill of his said wife and himself after their marriage.

The evidence also showed that said R. W. McLin left surviving him, as his sole heirs, his said wife Christine and their two infant children. The evidence also showed that no administration was ever had upon the estate of R. W. McLin, deceased.

There was evidence also which tended to show that the mother of Mrs. Christine E. McLin had given the latter money, which went into the said business of R. W. McLin & Co., and also proof tending to show that at the date of the death of R. W. McLin the firm of R. W. McLin & Co. was largely indebted, and after the death of R. W. McLin his surviving wife, Christine E. McLin, in consideration of having the estate of R. W. McLin, deceased, released from such debts and $6,419.36 in cash, she, as survivor, conveyed to W. T. Tuffly all of the property of said late firm.

There was evidence introduced by plaintiff tending to show that Mrs. Christine E. McLin contributed to the common stock of the firm of W. T. Tuffly in cash before the filing of the certificate of special partnership the amount which she was required by said certificate to pay in order to make her a special partner,
147 to wit, the sum of $5,419.36, and that she got the money from a sale by her to W. T. Tuffly of her late husband's interest in the firm of R. W. McLin & Co. There was evidence adduced by defendants tending to show that after the death of R. W. McLin an account of the affairs of R. W. McLin & Co. was taken, and that from the books and actual examination and estimate of the value of the goods on hand an estimate was made of the surplus due the partners in the firm of R. W. McLin & Co. on the 1st day of April, 1884, and that R. W. McLin's net interest in said firm was thus found to be $6,419.36, and that this interest was arrived at by estimating the assets of the firm, including the debts due to it, and deducting from the assets the liabilities of the firm, and that the conveyance by Mrs. McLin to W. T. Tuffly of this interest of her deceased husband in said firm of R. W. McLin & Co. constituted her contribution to the common stock, and that she did not in fact contribute any actual cash as her contribution to the common stock of the firm of W. T. Tuffly in order to make her a special partner therein, except as hereinbefore stated.

Plaintiff introduced in evidence the conveyance or transfer from Christine E. McLin to W. T. Tuffly as follows:

*Statement.* *Trial Balance of R. W. McLin & Co., Houston, Texas, April 1st, 1884.*

| | | |
|---|---|---|
| Cash | $1,803 24 | |
| Merchandise | 30,198 35 | |
| Real estate | 1,850 00 | |
| Store fixtures, horse & wagon, &c | 1,600 00 | |
| Personal acc'ts | 6,955 17 | 14,604 22 |
| Building ass'n stock | 295 00 | |
| Bills payable | | 10,389 44 |
| W. T. Tuffly | | 11,288 74 |
| R. W. McLin | | 6,419 36 |
| | $42,701 76 | $42,701 76 |

148 STATE OF TEXAS, }
*County of Harris.* }

Whereas the late firm of R. W. McLin & Co. was composed of R. W. McLin and W. T. Tuffly, and said R. W. McLin departed this life on the 26th day of March, 1884, leaving Christine E. McLin surviving widow; and whereas the said firm was largely indebted, and on the first day of April, 1884, the day to which it was possible to balance the books, the affairs of said firm is [are] shown by the annexed statement from the trial balance of the books of said firm; and whereas W. T. Tuffly has arranged for full settlement of all claims against said late firm and obtained a release of the estate of R. W. McLin from liability on account of the same: Now, therefore, in consideration of the premises, I do hereby transfer, sell, and assign unto W, T. Tuffly all and singular the goods, wares, and merchandise belonging to said firm of R. W. McLin & Co., and also all book accounts, stock and certificates of stock, and all real estate of said firm, and bills receivable, and all property of every name and nature belonging to said firm, to be held by him from this day.

In witness whereof I have hereunto set my hand, at Houston, this 24th day of April, 1884.

CHRISTINE E. McLIN.

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, Garrett Hardcastle, a notary public for and within said State and county, on this day personally appeared Mrs. Christina E. McLin, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 24th day of April, A. D. 1884.

[SEAL.] GARRETT HARDCASTLE,
*Notary Public, Harris County, Texas.*

149 Endorsed: "C. L., 1352. R. W. McLin, by Christine E. McLin, to W. T. Tuffly. Bill of sale & transfer. Filed April 10th, 1886. C. Dart, clerk"

There was also evidence tending to show that in making the aforesaid estimate of the assets and liabilities of the firm of R. W. McLin & Co. to arrive at the net interest of each of the partners a mistake was made, and some four hundred or five hundred dollars of liabilities was omitted, which would have made the net interest of R. W. McLin less by one-half of said omitted liabilities than it was estimated to be as above set forth.

There was also evidence tending to show that after the time to which the above estimate was made (April 1, 1884), and before the formation of the partnership between Tuffly and Mrs. McLin, the sum of $314.30 in actual cash was drawn by Mrs. McLin from the partnership funds of R. W. McLin & Co. on April 10, 1884, and was

charged to her account, and that this sum was not repaid by her at any time, and that at the time of the forming of the partnership between her and W. T. Tuffly and — said sum of $6,419.36 was placed to the credit of her account, the above sum of $314.30 stood as a debit against it.

There was also evidence tending to show that at the time of the assignment Mrs. McLin owned property in her individual right over and above that exempt by law from execution, and that she did not put in the $6,419.36 necessary to make her a special partner in the firm of W. T. Tuffly by $314.30; that the above estimate of the interest of R. W. McLin, dec'd, in the business and property of R. W.
McLin & Co. was based upon the assumption that the goods
150 were worth a certain amount, and that a certain per cent. of the debts could be collected.

There was also evidence introduced tending to show that an alteration was made in the capital of Mrs. Christine E. McLin in said partnership of W. T. Tuffly after the formation of said copartnership; that between the date of the formation of said copartnership, on April 24th, 1884, and the 20th day of May, 1884, an alteration of $1,002.52 was made in her capital in the business, and that her capital at the close of business on the 19th day of May, 1884, was reduced to $5,416.84, being $1,002.52 less than the amount called for in the certificate of partnership between her and W. T. Tuffly.

That this sum of $1,002.52 included the sum of $314.30, which she had drawn from the partnership funds of R. W. McLin & Co. in cash, after the death of R. W. McLin and before the formation of the copartnership with W. T. Tuffly, and which she did not repay at the time of the formation of said partnership nor afterwards; that during said first month of the business and up to and including May 19, 1884, her capital stock did not earn one thousand dollars' profits, and that it would be impossible to call the amount withdrawn by her "profits" on the business; that during the first three months and a fraction of the business, ending July 31, 1884, there was a net loss on the business, not including any losses by bad debts; that Mrs. McLin's share of this net loss was $591.17 and W. T. Tuffly's share of the loss was $1,182.00; that the business lost steadily from the commencement, in April, 1884, to the assignment, on March 23, 1885.

That the principal part of said $1,002.52 was cash, the remainder being merchandise bought by Mrs. McLin from the store.

That on August 1, 1884, Mrs. McLin's capital, as shown by
151 the ledger, was $4,445.96; that on Jan'y 1, 1885, it was $3,913.33, and that on the date of the assignment, March 25, 1885, it was $3,636.56; that the above were the balances to her credit on the respective dates, after deducting the goods purchased by her from the store and cash drawn by her. There was also evidence introduced tending to show that at the time of the assignment Mrs. McLin owned property in her individual right over and above that exempt by law from execution.

There was evidence introduced by plaintiff tending to show that George Bastian was book-keeper for W. T. Tuffly from the time of

the death of R. W. McLin, M'ch 26, 1884, up to the time Tuffly assigned, March 23, 1885; that Mrs. McLin had an account of 6,419.36 dollars as her capital; that she loaned the firm of W. T. Tuffly the following sums of money at the times stated, viz: May 20, 1884, $1,100.00; June 10, 1884, $1,200.00; July 15, 1884, $2,000.00; Aug. 1, 1884, $1,098.00, and Aug. 25, 1884, $2,600.00; that negotiable promissory notes of W. T. Tuffly were given for said amounts, the first payable thirty days after date and the other four payable one day after date to the order of Mrs. C. E. McLin; that Mrs. McLin dealt with the store of W. T. Tuffly during the existence of the special partnership; bought things out of the store and had them charged up, and that said book-keeper charged these up to her account and posted it against her in the ledger; that this debit on her account in the ledger was entirely the book-keeper's own way of charging it; that when she came in and purchased articles he charged her up with them and did not make any special account against her; that this was his way of entering it up; that the above amounts and also an additional amount of $802.56, which was charged to her and credited to one Tufts for work, &c., in
152 erecting buildings for her, were passed to that account and appeared on her account as reducing her capital stock; was because said book-keeper happened to pass it to that account himself; that he was simply carrying it to one account to get a trial balance; that if he had known as book-keeper that she was purchasing goods on a regular account he would have opened a special account for her; that the result of that was just the result of his book-keeping; that he, instead of opening a special account for her, just carried it to her capital-stock account, and that he had no special instructions as to how to charge it.

That she was purchasing goods like any other customer, and they were charged on his books to that account, and by that it appears that her capital stock was reduced; that that should have been properly opened as a capital account and another account as hers opened in order to show that that capital was there; that the goods she purchased from the store was [were] charged up to the same account; it ran along under one account; that she ought to have had a private account opened if he had thought about it; that there was $7,998.00 of money loaned by her to the firm, which was credited up at different times, as above stated, from May 20, '84, to Aug. 25, '84; that she had in the firm about $12,000.00, including the above loaned money; that her purchases never exceeded the amount she had loaned. There was evidence introduced by defendants tending to show that the $7,998.00 for which the notes were given was not intended as an investment in the capital stock of the business, but only as a loan. The undisputed proof also showed that of the above amount the first installment of $1,100.00 was loaned on May 20, 1884; that the said sum of $7,998.00 was not placed to the credit of Mrs. McLin in the books, but that notes were given for it, and it was placed to the credit of "bills-payable account," and that in the schedule attached to the assignment made by W. T. Tuffly to
153 Louis Tuffly Mrs. Christine E. McLin was listed as one of the creditors on account of these notes for borrowed money.

There was also evidence introduced by defendants, upon cross-examination of said George Bastain, tending to show that an alteration of Mrs. McLin's capital stock was made by a reduction of it to the extent of $1,002.52 from the time of the formation of the alleged special copartnership up to and including the 19th day of May, 1884, and before the loan by her to the firm of the above sum of $7,988.00 or any part thereof; also that he wrote up the books all the time under Mr. Tuffly's direction, and that he presumed Mr. Tuffly was cognizant of what he was doing; that he usually got the data from which to make up the books from Mr. Tuffly where it was necessary to get information from him in regard to the matter; that if there was any regular entry to be made he would go right ahead without asking him; that the books were kept there in the store and he presumed Mr. Tuffly examined them; that said witness (Bastian) was a book-keeper by profession and understood his business pretty well; that if he charged the goods bought and cash drawn out by Mrs. McLin to her in some other account or on some other page of the ledger her capital would have been diminished, anyhow.

That it is the general way in book-keeping to charge all sums drawn by partners to their capital account, but that there are different ways of keeping books in that respect, but that the difference is one of form and not of substance; that it is more convenient to put it to the partner's account, for then when he came to credit the profits and charge the losses he knew what the net balance was;
154 that Mrs. McLin drew out in cash from the time of the formation of the partnership up to the time of the assignment the sum of $1,588.48. On redirect examination by plaintiff the witness stated that this was the first time he had ever kept books for a special partnership. There was also evidence introduced by defendants tending to show that at the date of the formation of the partnership between W. T. Tuffly and Christine E. McLin said Tuffly's capital stock was $11,288.74; that at the date of the next balance, Aug. 1, 1884, his capital was $9,232.11; that on Jan'y 1, 1885, it was $8,625.00, and that at the date of the assignment it was $7,908.87. The proof also showed that W. T. Tuffly, prior to his assignment, had paid Mrs. McLin $802.56 interest on her notes for borrowed money; also that after the assignment Mrs. McLin presented her claim to the assignee, Louis Tuffly, for said borrowed money and that he refused to allow same; that thereupon she brought suit against him in the district court of Harris county, Texas, and that a decree of that court was given in her favor for the full amount of said claim and interest, to wit, $8,509.04, and established the same as a claim against the estate of W. T. Tuffly in the hands of said Louis Tuffly; that no credit or allowance was made in said judgment for the interest paid on said notes as above set forth, or for moneys and goods drawn by Mrs. McLin from the store and business of W. T. Tuffly; that none of the parties defendant in this action were parties to that decree; that after said judgment was rendered the attorney for Mrs. McLin agreed with the attorney for Louis Tuffly to remit whatever amount Mrs. McLin owed the firm

of W. T. Tuffly, and there was an understanding that the amount should be credited on the notes, but it was not done. The agreement was that whatever advances were made to Mrs. McLin, or goods purchased by her out of the firm of W. T. Tuffly, was to be
155 remitted from the judgment on these notes. None of the defendants in this action were present at the making of this agreement and were not parties thereto.

The proof also showed that Morrison, Herriman & Co., Dunham, Buckley & Co., nor William H. Lyon & Co., nor either of said firms or the members thereof or either of them, had ever accepted or assented to the alleged assignment from W. T. Tuffly to Louis Tuffly for the benefit of creditors. The proof also showed that the partnership business of the firm of W. T. Tuffly was carried on continuously from April 16, 1884, to March 23, 1885, and that no renewal of the special partnership certificate was ever made nor other certificate made or signed nor any notice published other than that above set forth. There was also proof tending to show that Christine E. McLin owned property over and above that exempt by law from execution March 23, 1885, in her individual right, and the proof showed that she did not join in the deed of assignment nor convey to the assignee, Louis Tuffly, her individual property.

On the issue of the right of the defendant, James G. Tracy, U. S. marshal, to recover over against his codefendants, Morrison, Herriman & Co. & others, on their indemnity bonds the said bonds were read in evidence as follows:

156 MORRISON, HERRIMAN & Co. *vs.* W. T. TUFFLY. } No. —.

Whereas a writ of attachment has been issued in an action pending in the circuit court of the United States in and for the eastern district of Texas, at Galveston, in favor of the above-named plaintiffs against the said W. T. Tuffly, as defendant, which, by the direction of the plaintiff, has been levied by J. G. Tracy, United States marshal in and for said district, upon certain goods and chattels, viz., stock of goods, wares, and merchandise, furniture and fixtures, books and accounts and papers of whatever description contained in the store of said W. T. Tuffly, in the first story of the building on the corner of Main and Prairie streets, known as the Burns building, in the city of Houston, Texas:

Now, therefore, in consideration that the said J. G. Tracy has levied said attachment upon the above-described property, we, Morrison, Herriman & Co., as principals, and Wm. D. Cleveland and C. Lombardi and S. K. McIlhenny, as sureties, acknowledge ourselves bound to pay to J. G. Tracy, United States marshal as aforesaid, the sum of nineteen thousand dollars, conditioned that the above-bound Morrison, Herriman & Co. shall well and sufficiently indemnify, save, and keep harmless the said J. G. Tracy, United States marshal as aforesaid, from all costs, charges, damages, and suits that he may incur or become liable to in consequence of the levy of said attach-

ment upon said property or any part thereof, and shall pay off, discharge, and cancel all judgments, damages, and costs that may be rendered against said J. G. Tracy by reason of said levy.

Witness our hands this 31st day of March, A. D. 1885.

MORRISON, HERRIMAN & CO.,
By VERNON LEMAN, *Agent.*
WM. D. CLEVELAND.
C. LOMBARDI.
S. K. McILHENNY.

157 Foregoing bond endorsed: "Filed April 10th, 1886. C. Dart, clerk."

In Circuit Court of the United States, Eastern District of Texas, at Galveston.

DUNHAM, BUCKLEY & Co.
*vs.*
W. T. TUFFLY.

We, the undersigned, Dunham, Buckley & Co., as principals, and W. L. Foley and John Kennedy, as sureties, acknowledge ourselves bound to pay to James G. Tracy, the U. S. marshal for the eastern district of Texas, the sum of two thousand five hundred dollars, conditioned that the said Dunham, Buckley & Co. will well and truly indemnify, save, and keep harmless the said Tracy, marshal as aforesaid, from all costs or damages which he may be compelled to pay by reason of the levy by him of the writ of attachment in the above cause in favor of said Dunham, Buckley & Co. against W. T. Tuffly upon the stock of goods, wares, and merchandise, furniture, fixtures, books, etc., of the said W. T. Tuffly, being the same now in the store lately occupied by him in what is known as the Burns building, on the corner of Main and Prairie streets, in the city of Houston, Texas, or upon any part thereof. If the said Dunham, Buckley & Co. shall well and truly pay off, satisfy, and discharge all such damages and costs and expenses which said Tracy may be compelled to pay by reason of said levy, then this bond is to be null and void; otherwise in full effect.

Witness our hands this 28th day of March, A. D. 1885.

DUNHAM, BUCKLEY & CO.,
By H. W. CHAPMAN, *Agent.*
W. L. FOLEY.
JOHN KENNEDY.

Foregoing bond endorsed: "Filed April 10, 1886. C. Dart, clerk."

158 In Circuit Court of the United States, Eastern District of Texas, at Galveston.

WM. H. LYON & CO.
*vs.*
W. T. TUFFLY.

We, the undersigned, Wm. H. Lyon & Co., as principals, and W. L. Foley and Thos. R. Franklin, as sureties, acknowledge ourselves bound to pay to James G. Tracy, the U. S. marshal for the eastern district of Texas, the sum of two thousand six hundred dollars ($2,600.00), conditioned that the said Wm. H. Lyon & Co. will well and truly indemnify, save, and keep harmless the said Tracy, marshal as aforesaid, from all costs or damages which he may be compelled to pay by reason of the levy by him of the writ of attachment in the above cause in favor of said Wm. H. Lyon & Co. against W. T. Tuffly upon the stock of goods, wares, and merchandise, furniture, fixtures, books, etc., of the said W. T. Tuffly, being the same now in the store lately occupied by him in what is known as the Burns building, on the corner of Main and Prairie streets, in the city of Houston, Texas, or upon any part thereof, or upon any other property that may be pointed out to him by the plaintiffs or their agents or attorneys. If the said Wm. H. Lyon & Co. shall well and truly pay off, satisfy, and discharge all such damages and costs and expenses which said Tracy may be compelled to pay by reason of said levy, then this bond is to be null and void; otherwise in full force and effect.

Witness our hands this 31st day of March, A. D. 1885.

WM. H. LYON & CO.,
By VERNON LEMAN, *Agent.*
W. L. FOLEY.
THOS. R. FRANKLIN.

Foregoing bond endorsed: Filed April 10, 1886. C. Dart, clerk.

159 The above and foregoing being the substance of all the testimony admitted to the jury, the court thereupon instructed the jury as follows:

"GENTLEMEN OF THE JURY: If you shall find from the evidence that the limited partnership as stated and claimed by plaintiff was recognized as such in its inception by the three attaching creditors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor and its property attached as such after its assignment, and that its other creditors also so treated and dealt with it and accepted its assignment to pl'ff as such, and that Mrs. McLin, named therein as the special or limited partner, and W. T. Tuffly, named therein as the general partner, and whose name constituted the firm name, always treated it as a special or limited partnership, and that Mrs. McLin loaned it money as claimed, and subsequently sued the plaintiff as its assignee

therefor, then and in such case you likewise may deem the same a limited partnership and regard the assignment to plaintiff as valid.

If you shall also find that the same was made at a time when the 'W. T. Tuffly' paper was maturing faster than it could be met in the ordinary and usual course of its business, and that such assignment was made in good faith in contemplation of insolvency; and if you shall further find that the defendant Tracy, as U. S. marshal, seized the property so assigned under and by virtue of the attachments of the three attachment creditors who have made themselves defendants herein, then you will find for the plaintiff herein as against def't Tracy and the sureties on his official bond and the three firms of attaching creditors for the value of the goods as they were at the time and place of their seizure under such writs of attachment, such value to be ascertained from all the facts
160 detailed in evidence before you.

But if you shall otherwise find as to the facts constituting the rights of the parties as hereinbefore set forth, then and in such case your verdict will be for the defendants."

And also charged the jury as follows at the request of defendants:

If the proof shows you that McLin never in fact contributed the amount to the common stock necessary to make her a special partner, or that she afterwards altered and diminished the amount of her capital stock, and that these facts or either of them were unknown to the attaching creditors who are defendants herein at the time they dealt with the firm and sued W. T. Tuffly, then you are instructed that neither the recognition and dealing by them with Tuffly & Mrs. McLin as a limited partnership nor the suing of W. T. Tuffly in ignorance of said facts estops or precludes them or any of the defendants from showing that said partnership was never in fact legally formed as a limited partnership, for the reason above stated, nor from showing that it afterwards, by reason of the alteration and diminution of Mrs. McLin's capital stock, was rendered general partnership.

C. ANSON JONES,
*Attorney for Defendants.*

And gave no other instruction to the jury, except in regard to the right of defendant Tracy to recover over on his indemnity bonds in case the verdict should be against him, with instructions as to form of verdict. To so much of the said charge of the court to the jury as is as follows, to wit: If you shall find from the evidence that the limited partnership as stated and claimed by plaintiff was recognized as such in its inception by the three attaching credit-
161 ors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor and its property attached as such after its assignment, and that its other creditors also so treated and dealt with it, and accepted its assignment to plaintiff as such, and that Mrs. McLin, named therein as the special or limited partner, and W. T. Tuffly, named therein as the general partner, and whose name constituted the firm name, always treated it as a special or limited partnership,

and that Mrs. McLin loaned it money as claimed, and subsequently sued the plaintiff as its assignee therefor, then and in such case you likewise may deem the same a limited partnership and regard the assignment to plaintiff as valid, and to each and every portion of the same the defendants, by their counsel, then and there, before the jury retired from the bar, excepted, and then and there prayed a bill of exceptions, which is granted, signed, sealed, and made a part of the record.

And defendants, by their counsel, before the jury had retired from the bar, also requested the court to charge the jury, as a separate and distinct charge from all others, as follows, to wit:

If, in accordance with instructions given you, you find for plaintiff you will return a verdict for plaintiff for the amount only of the claims of creditors who have consented to the assignment (excepting Mrs. McLin's claim), according to the proof, with interest thereon at the rate of eight per cent. per annum from January 1, 1886.

But the court refused said charge, and refused to so charge the jury as prayed by defendants, and gave no equivalent instruction to the jury; to which ruling of the court in refusing said charge and in refusing to instruct the jury as above prayed, or to give any equivalent instruction, the defendants, by their counsel, then
162 and there excepted before the jury retired from the bar, and then and there, before the jury retired from the bar, prayed a bill of exceptions to said ruling, which is granted, signed, sealed, and made part of the record.

And defendants, by their counsel, then and there, before the jury retired from the bar, asked the court to instruct the jury as follows, as a separate and distinct charge from all others, to wit:

The instrument offered in evidence by plaintiff, bearing date the 24th day of April, 1884, and signed by Morrison, Herriman & Co., Dunham, Buckley & Co., Wm. H. Lyon & Co., and other creditors of the firm of R. W. McLin & Co., through their agent, Andrew Wilson, is only a release of the estate of R. W. McLin, deceased, from all liability on account of their respective claims. The recitation in it that said claims had been assumed by the firm of W. T. Tuffly, composed of W. T. Tuffly as general and Christine E. McLin as special partner, as appeared by their partnership certificate by them signed, does not preclude or estop the defendants in this case from showing that such limited partnership was never in fact formed, or that by reason of violation of the law it was afterward converted into a general partnership.

But the court refused said charge, and refused to so charge the jury as prayed by defendants, and gave no other instruction to the jury relative thereto than as hereinbefore set forth; to which ruling of the court in refusing said charge and in refusing to instruct the jury as above prayed, or to give any other instruction in relation thereto than as hereinbefore set forth, the defendants, by their counsel, then and there excepted before the jury retired from the bar, and then and there, before the jury retired from the bar, prayed a bill of exceptions to said ruling, which is granted, signed, sealed,
163 and made a part of the record.

And thereupon the defendants, by their counsel, then and there, before the jury retired from the bar, prayed the court also to charge the jury as follows, as a separate and distinct charge from the foregoing and from all others, to wit:

No statements, representations, or suggestions made by Wilson to W. T. Tuffly and Mrs. McLin relative to the formation of a limited partnership, as testified to by them, can make it a limited partnership if it is not or was not such in fact and law, nor can they operate to prevent the defendants in this cause from showing that the requirements of the law were not complied with in forming the limited partnership or from showing that the provisions of the law were afterward violated by them so as to make it a limited partnership, and you will therefore disregard such testimony.

But the court refused said charge and refused to so charge the jury as prayed by defendants, and gave no other instruction to the jury relative thereto than as hereinbefore set forth; to which ruling of the court in refusing said charge and in refusing to instruct the jury as above prayed or to give any other instruction relative thereto than as hereinbefore set forth the defendants, by their counsel, then and there excepted before the jury retired from the bar, and then and there, before the jury retired from the bar, prayed a bill of exceptions to said ruling, which is granted, signed, sealed, and made a part of the record.

And defendants, by their counsel, before the jury had retired from the bar, also requested the court to charge the jury, as a separate and distinct churge from all others, as follows, to wit:

If you find that before the time of the contribution by Mrs. Christine E. McLin to the common stock of the copartnership of W. T. Tuffly she had withdrawn a sum of cash from the surviving partner of R. W. McLin which was to her debit at the time of
164 such contribution and had not been repaid by her, then she cannot be said to have contributed the full amount specified in the certificate as the amount to be paid by her into the common stock; and if you so find, then your verdict will be for the defendants.

But the court refused said charge and refused to so charge the jury as prayed by defendants, and gave no other instruction to the jury than as hereinbefore set forth; to which ruling of the court in refusing said charge and in refusing to instruct the jury as above prayed or to give any other instruction relative thereto than as hereinbefore set forth the defendants, by their counsel, then and there excepted before the jury retired from the bar, and then and there, before the jury retired from the bar, prayed a bill of exceptions to said ruling, which is granted, signed, sealed, and made a part of the record.

And the defendants, by their counsel, then and there, before the jury retired from the bar, asked the court to instruct the jury, as a separate and distinct charge from all others, as follows, to wit:

If, by reason of failure to comply with the law in the first instance or by reason of violation of the law after the partnership was formed, the alleged limited partnership became a general partner-

ship, then it so continued under the law and the facts of this case; and if you find, under this and other instructions, that it was a general partnership at the date of the alleged assignment, March 23, 1885, then you are charged that said alleged assignment was illegal and void because of the failure of Mrs. McLin to join in it or to convey her individual property to the assignee, and in that event your verdict should be for the defendants.

But the court refused said charge and refused to so charge
165 the jury as prayed by defendants, and gave no other instruction to the jury relative thereto than as hereinbefore set forth; to which ruling of the court in refusing said charge and in refusing to instruct the jury as above prayed, or to give any other instruction relative thereto than as hereinbefore set forth, the defendants, by their counsel, then and there excepted before the jury retired from the bar, and then and there prayed a bill of exceptions to said ruling, which is granted, signed, sealed, and made a part of the record.

Given under my hand and seal in open court this 7th day of May, 1886.

[SEAL.] CHAUNCEY B. SABIN,
*U. S. District Judge for the Eastern District of Texas.*

The foregoing bill of exceptions is endorsed as follows, to wit:
"1352. Louis Tuffly, ass'n-, *vs.* James G. Tracy *et al.* Defendants' second bill of exceptions. Filed in open court May 7th, 1886. C. Dart, clerk."

166 *Defendants' Third Bill of Exceptions. Filed in Open Court May 7th*, 1886.

In U. S. Circuit Court for the 5th Circuit and Eastern District of Texas, Sitting at Galveston.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY *et al.* } No. 1352.

Be it remembered that at the March term, 1886, of the circuit court of the United States for the 5th circuit and eastern district of Texas, sitting at Galveston, to wit, on the 8th day of April, 1886, the above cause coming on to be heard, the following evidence was introduced, to wit: Plaintiff introduced in evidence the certificate of formation of special partnership between W. T. Tuffly and Christine E. McLin as follows:

167 THE STATE OF TEXAS,
*County of Harris.*

We, W. T. Tuffly and Mrs. Christine E. McLin, hereby certify that we have formed a copartnership under the firm name of W. T. Tuffly, under which firm name the business of such copartnership shall be conducted.

The general nature of the business intended to be transacted is a general retail and wholesale, if they see proper, fancy and staple dry goods and notion establishment in the city of Houston, Texas. W. T. Tuffly is and will be the general partner of such partnership, resident of the city of Houston, Texas, and Mrs. Christine E. McLin is and will be the special partner of such partnership, whose residence is also in said city of Houston, Texas.

The said Mrs. Christine E. McLin has contributed the sum of six thousand four hundred and nineteen $\frac{36}{100}$ dollars to the common stock. The said partnership is to commence on the 16th day of April, 1884, and continue for the space of two years, to end on the 16th day of April, 1886.

W. T. TUFFLY.
CHRISTINE E. McLIN.

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, Garrett Hardcastle, a notary public in and for said State and county, on this day personally appeared W. T. Tuffly and Mrs. Christine E. McLin, to me known to be the persons whose names appear subscribed to the foregoing certificate, and severally acknowledged that they had executed and subscribed said certificate for the purposes and considerations therein set forth.

In witness whereof I have hereunto set my hand and affixed my seal of office this 24th day of April, 1884.

[SEAL.] GARRETT HARDCASTLE,
*Notary Public, Harris County, Texas.*

168 THE STATE OF TEXAS, }
*County of Harris,* }

W. T. Tuffly, the general partner formed by the certificate hereto forming part, being duly sworn, on oath says that Mrs. Christine E. McLin, the special partner therein, has contributed to the common stock of said partnership the sum specified in said certificate, and the said sum has in good faith actually been paid in cash.

W. T. TUFFLY.

Subscribed & sworn to this April 24th, 1884.

[SEAL.] GARRETT HARDCASTLE,
*Notary Public, Harris Co., Texas.*

THE STATE OF TEXAS, }
*County of Harris.* }

I, A. Erichson, county clerk of said county, do hereby certify that the foregoing instrument of writing, with its certificate of authentication, was filed for registration in my office on the 25 day of April, A. D. 1884, at 9 o'clock a. m., and duly recorded on the 26 day of May, A. D. 1884, at 3.55 o'clock p. m., in the records of contracts of said county, in Book —, volume 2, on pages No. 38 & 39.

In testimony whereof witness my hand and official seal, at office, the 26 day of May, 1884.

[SEAL.] A. ERICHSON,
*County Clerk, Harris Co., State of Texas,*
By LAWRENCE L. COHEN, *Deputy.*

Endorsed: "3962. W. T. Tuffly with Mrs. Christine E. McLin. Certificate of partnership. Filed April 25th, 1884, at 9 a. m. A. Erichson, C. C. C., H. C., by Lawrence L. Cohen, dep."

169 Also plaintiff offered in evidence the deed of assignment from W. T. Tuffly to the plaintiff, Louis Tuffly, dated March 23, 1885, with acknowledgment, certificate, & schedules thereto belonging and endorsements thereon, including the acceptance of the assignment by Louis Tuffly indorsed thereon, all filed herein April 10, 1886, as follows, to wit:

170 (*Assignment.*)

THE STATE OF TEXAS, }
*County of Harris.* }

Whereas the firm of W. T. Tuffly, composed of W. T. Tuffly, the general partner, and C. E. McLin, as special partner, finding it impossible to pay its debts as they mature and being desirous to have a distribution of all the property of said firm and the property of the said W. T. Tuffly, partnership and individual, and wishing to avail himself of the provisions of the general assignment law in such cases made & provided:

Now, therefore, in consideration of the premises and one dollar to me in hand paid, I, W. T. Tuffly, hereby assign and convey and deliver possession of all and singular my property and effects, of whatever name and nature, both personal & real, and which I own as copartner and individually, and intended to include all property of which or in which I have any interest whatever, wherever the same may be, to Louis Tuffly, as assignee, for the purposes aforesaid, taking possession of the same and sell the same, collect and convert the same, and, when so sold, collected, and converted, to appropriate the same ratably or in full payment, as the case may be, of all my debts and the debts of the firm of W. T. Tuffly, said assignee to proceed under the law aforesaid. This assignment is intended for the benefit of all such of my creditors only as will consent to accept their proportional share of said property and estate so hereby conveyed and discharge me, as aforesaid, from their respective claims, said assignee to take lawful compensation for his services herein and expenses and counsel fees necessary to aid him and enable him to carry out the purposes of this conveyance. Schedules are hereto attached and are made as particular as I can do at this time, but in any particular where they may be incorrect or insufficient in detail they will be corrected by me.

In witness whereof I hereunto set my hand, at Houston, this March 23rd, 1885.

W. T. TUFFLY.

171 STATE OF TEXAS, }
*Harris County.* }

Before me, J. T. Ferguson, a notary public in and for Harris county, on this day personally appeared W. T. Tuffly, known to me to be the person whose name is subscribed to the foregoing instrument of writing, and acknowledged to me the execution of the same for the purposes and consideration therein contained and expressed.

Witness my hand and seal of office, this 23rd day of March, A. D. 1885.

[SEAL.]

J. T. FERGUSON,
*Notary Public, Harris Co., Texas.*

A full and true account and inventory of all the creditors of W. T. Tuffly, with their place of residence, as far as known, the sum owing to each and the nature of the debt and the cause and consideration of the same.

| | | | |
|---|---|---|---|
| A. C. Mather & Co., Chicago | 21 | 00 | open acc't for mdse. |
| Quaker City Shirt Co., New York | 102 | 00 | " " " " |
| H. B. Claflin & Co., New York | 639 | 15 | " " " " |
| P. J. Willis & Bro., Galveston | 1,088 | 95 | note & open acc't for mdse. |
| W. H. Lyons & Co., New York | 1,372 | 86 | " " " " |
| H'y Charnock, New Orleans | 432 | 60 | " " " |
| Browning & Coyle, St. Louis | 74 | 60 | " " " |
| Rosenheim, Levis & Co., St. Louis | 125 | 60 | acceptance for mdse. |
| Morrison, Herriman & Co., New York | 8,818 | 63 | notes & open acc't for mdse. |
| Teft, Weller & Co., New York | 775 | 01 | " " " " |
| Dunham, Buckley & Co., New York | 1,007 | 93 | open acc't for mdse. |
| Chas. C. Carpenter, " | 14 | 40 | " " " " |
| New York Collar Co., " | 29 | 25 | " " " " |
| Thompson, Langdon & Co., " | 144 | 79 | " " " " |
| Warner Bros., " | 67 | 09 | " " " " |
| 172 Wm. O. Headley, New York | 75 | 58 | open acc't for mdse. |
| McIlhenny & Co., Houston | 42 | 51 | " " " " |
| Chilton, Guithree & Co. | 99 | 67 | " " " " |
| Cook & Valentine | 97 | 32 | " " " " |
| Princess of Wales Co., New York | 13 | 00 | " " " " |
| Max Judd & Co., St. Louis | 619 | 60 | note " |
| New Braunfels Manf. Co., New Braunfels | 259 | 00 | open acc't " |
| C. L. Woodbridge, New York | 84 | 07 | " " " |
| Trojan Shirt & Collar Co. | 72 | 50 | " " " |
| Mrs. C. E. McLin | 7,798 | 00 | notes, borrowed money. |
| Mattie Simmons | 505 | 00 | due bill, borrowed money. |
| C. J. Wright | 200 | 00 | acc't borrowed money. |

| | | | | | |
|---|---|---|---|---|---|
| Wages, W. P. Archer, Houston | | 238 | 65 | open | acc't. |
| " Mrs. L. Justice, " | | 40 | 30 | " | " |
| " Joe Schwander, " | | 27 | 85 | " | " |
| Mdse., Sam'l Roos, " | | 9 | 95 | " | " |
| " E. H. Renish & Co., Houston | | 3 | 25 | " | " |
| Light, Houston Electrical Light Co., Houston | | 46 | 00 | " | " |
| Insurance, S. O. Cotton & Bro., Houston | | 49 | 00 | " | " |
| Oil, Tex. Lamp & Oil Co., Houston | | 3 | 45 | " | " |
| Mdse., Alf. Chimine, " | | 2 | 75 | " | " |
| " Melinger & Bro., " | | 3 | 50 | " | " |
| " C. J. Koehler, " | | 2 | 15 | " | " |
| " Jas. Bute, " | | 5 | 38 | " | " |
| " Wm. Dissen, " | | 48 | 95 | open | acc't. |
| " W. L. Foley, " | | 3 | 10 | " | " |
| " A. L. Steele, " | | 5 | 16 | " | " |
| Mdse., G. W. Baldwin, " | | 2 | 10 | " | " |
| 173 " H. Waddell, " | | 7 | 00 | open | acc't. |
| " A. L. Steele, " | | 19 | 80 | " | " |
| Mdse., H. M. Brown, Hempstead | | 31 | 35 | " | " |
| City Bank, secured by Krupp & Tuffly, endorsers | 500 | 00 | | | |
| Secured by J. R. Morris, endorser | 500 | 00 | | | |
| Secured by Loan Ass'n stock | 750 | 00 | | | |
| Hugh Burns, rent; has lien on goods in building | 500 | 00 | | | |
| Some city bills, due April 1st, 1885, amounts not ascertained, but amounting to about | 50 | 00 | | | |

THE STATE OF TEXAS, }
*County of Harris.* }

W. T. Tuffly, being duly sworn, on oath says that the foregoing inventory is in all respects just and true, according to his best knowledge and belief.

W. T. TUFFLY.

Subscribed and sworn to this March 23, 1885.

[SEAL.]

J. T. FERGUSON,
*Notary Public, Harris County, Texas.*

A full and true inventory of the assignor'-, W. T. Tuffly's, estate at the date of his assignment, March 23rd, 1885, both real and personal, in law and equity.

| | |
|---|---|
| A stock of assorted merchandise in store in the Burns building, on the corner of Prairie and Congress streets, amounting in value to about | $25,000 00 |
| Notes & open accounts of various parties, nominally of value of about $5,000, as appears on the books of the company, which are referred to as part of this schedule | 5,000 00 |
| 3 shares of Loan Association stock (but upon this the City Bank has lien to secure $750.00) | 750 00 |
| Furniture and fixtures in store | 1,300 00 |
| 174 ½ int., blocks Nos. 126, 127, 131, 132, 133, & 134, Ryan's Ad'n to city of Houston | 500 00 |
| Lots Nos. 11, 12, 13, & 14, block No. 2, Johnson Ad'n | 400 00 |

There is a landlord's lien on mdse. in store in favor of Hugh Burns for $750.00 rent.

| | |
|---|---|
| Block No. sixty (62), in Baker's Ad'n to city, of subdivision to lot No. 35 in O. Smith sur. | 800 00 |

THE STATE OF TEXAS, }
*County of Harris.* }

W. T. Tuffly, being duly sworn, on oath says that the foregoing inventory is in all respects just and true, according to his best knowledge and belief.

W. T. TUFFLY.

Subscribed and sworn to this March 23, 1885.

[SEAL.] J. T. FERGUSON,
*Notary Public, Harris County, Texas.*

THE STATE OF TEXAS, }
*County of Harris.* }

I, Alex. Erichson, county clerk of said county, do hereby certify that the foregoing instrument in writing, with its certificate of authentication, was filed for registration in my office on the 23rd day of March, A. D. 1885, at 3.30 o'clock p. m., and duly recorded on the 30th day of March, A. D. 1885, at — o'clock — m., in the Records of Deeds of said County, in Book —, volume 31, on pages No. 589 till [to] 593, incl.

In testimony whereof witness my hand and official seal, at office, this 30th day of March, 1885.

[SEAL.] ALEX. ERICHSON,
*County Clerk, Harris Co., State of Texas,*
By HUGO LEHMANN, *Deputy.*

The foregoing paper endorsed as follows:

"No. 5633. C. L., 1352. W. T. Tuffly to Louis Tuffly. Assignment. I hereby accept this assignment this March 23, '85. Louis Tuffly. Filed for record M'ch 23, 1885, at 3.30 p. m. Alex. Erichson, C. C. C., H. Co., by L. H. Waring, deputy. $6.00 p'd. Filed Ap'l 10, 1886. C. Dart, clerk."

175 And thereupon, when said deed was offered in evidence, defendants, by their counsel, objected to the introduction of said deed in evidence, because, first, it showed on its face that Mrs. C. E. McLin was a partner in the firm of W. T. Tuffly; second, that she was scheduled as a creditor of said firm, and, third, that the said assignment thereby allows her to participate in the benefits of the assignment and thereby reserves a benefit to one of the partners and gives her an unlawful preference over the creditors of the partnership; but said objections were by the court overruled and said deed of assignment was admitted in evidence before the jury; to which ruling of the court the defendants, by their counsel, then and there excepted and prayed a bill of exceptions, which is here now granted, signed, sealed, and made a part of the record. Plaintiff also fully proved that he duly qualified as assignee under said assignment by giving bond, in the amount and form required by law, on March 23, '85.

Plaintiff also offered in evidence the following notice of formation of special partnership, to wit:

HOUSTON, *April* 25, 1884.

The undersigned give notice that they have formed a copartnership under the firm name of W. T. Tuffly, having the following terms, as will appear by their executed and recorded certificate: W. T. Tuffly is the general partner; Mrs. Christina E. McLin is the special partner, and has contributed to the common stock the
176 sum of six thousand four hundred and nineteen $\frac{36}{100}$ dollars.

W. T. TUFFLY.
CHRISTINE E. McLIN.

I, Alexander Erickson, clerk of the county court of Harris county, direct the foregoing advertisement shall be published six weeks in the Houston Evening Journal.

Witness my hand this 25th day of April, 1884.

A. ERICKSON,
*C. C. C., H. C.*

STATE OF TEXAS, *County of Harris:*

I, J. L. Watson, manager & publisher of the newspaper published in the city of Houston, county of Harris, hereby solemnly swear that the foregoing notice was published in the newspaper known as the Houston Evening Journal for six successive weeks from the 26th day of April, 1884.

J. L. WATSON.

Subscribed & sworn to the sixth day of June, 1884.

Sworn to & subscribed before me this 7th day of November, 1885.
ALEX. ERICKSON,
*C. C. C., H Co.,*
By HUGO LEHMAN, *Deputy.*

177 And also proved that said notice had been published in a newspaper published in Houston, Texas, for six successive weeks from April 25, 1884, to June 6, 1884, both days inclusive; and proved that due affidavit of such publication was made by the publisher of the paper before the county clerk of Harris county, Texas, on June 6, 1884, but that, through fault of said clerk and no one else, the certificate of such affidavit was not attached, and that he again swore to it on November 7, 1882, at the request of Mr. Tuffly, because of such failure of the clerk and to supply the required affidavit; and thereupon, when said notice was offered in evidence, the defendants, by their counsel, objected to the introduction of said notice in evidence on the ground that it is not in compliance with law, in this, that it does not state the terms of partnership fully; it fails to state the general nature of the business intended to be transacted by the alleged partnership, the period at which partnership is to commence, how long it is to be continued, or when it is to terminate, and also omits to state where business is to be transacted; but said objections were by the court overruled and said notice of terms of partnership was admitted in evidence before the jury; to which ruling of the court the defendant- then and there excepted
178 and prayed a bill of exceptions, which is here now granted, signed, sealed, and made a part of the record.

Plaintiff also introduced in evidence, over the defendants' objection, the following agreement, to wit:

The undersigned, creditors of the late firm of R. W. McLin & Company, in consideration of the assumption of all the indebtedness of said late firm by the firm of W. T. Tuffly, composed of W. T. Tuffly, general, and Christina E. McLin, special, partner, as appears by the certificate by the- signed, hereby release the estate of R. W. McLin, deceased, from any and all liability on account of the obligations of said firm of R. W. McLin & Co., either by note or open account or otherwise.

Houston, April 24th, 1884.

MORRISON, HERRIMAN & CO.,
By A. WILSON.
DUNHAM, BUCKLEY & CO.,
By A. WILSON.
TEFT, WELLER & CO.,
By ANDREW WILSON.
W. H. LYONS & CO.,
By ANDREW WILSON.
WHITFIELD, POWERS & CO.,
By ANDREW WILSON.

MILLS & GIBB,
By ANDREW WILSON.
WM. O. HEADLEY & SON,
By ANDREW WILSON.
HALSTEAD, HAINES & CO.,
By ANDREW WILSON.
P. J. WILLIS & BRO.,
By ANDREW WILSON.
WM. E. BURLICK & CO.,
By ANDREW WILSON.
WM. A. DROWN & CO.,
By ANDREW WILSON.
ROSENHEIM, LEVIS & CO.,
By ANDREW WILSON.
THOS. RUSSELL & CO.,
By ANDREW WILSON.
L. V. HOLTZMARSTER,
By ANDREW WILSON.
179 FRANKENTHAL BROS.,
By ANDREW WILSON.
MAX JUDD & CO.,
By ANDREW WILSON.

The proof showed that on March 26, 1884, W. T. Tuffly and R. W. McLin (husband of Christine E. McLin) were partners under the firm name of R. W. McLin & Co., and had been such for some time prior to March 26, 1884, and that said R. W. McLin died on March 26, 1884.

Plaintiff also proved that Tracy, as principal, and defendants Dooley, Scanlan, and Brady, as his sureties, made, executed, and delivered the bond of said Tracy as U. S. marshal, as set forth in plaintiff's petition.

There was also proof tending to show that plaintiff took possession of the assigned property immediately after the assignment and held continuous and exclusive possession of the same until March 31, 1885, when it was taken from his possession by the defendant Tracy, as U. S. marshal, under writ of attachment issued out of the circuit court of the U. S. for the eastern district of Texas, at Galveston, in favor of Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., and that he had had nothing to do with it since, except to file the suit. Plaintiff proved that the following creditors, to wit:

| | | |
|---|---|---|
| 180 | J. R. Morris (Houston, Tex.) | 500 00 |
| | Trojan Shirt & Collar Co. (N. Y.) | 76 00 |
| | McIlhenny & Co., Houston, Tex. | 88 67 |
| | G. W. Baldwin, " " | 4 05 |
| | Teft, Weller & Co. (New York) | 771 32 |
| | P. J. Willis & Bro. (Galveston, Tex.) | 1,135 51 |

| | |
|---|---|
| W. P. Archer (Houston, Texas) | 282 90 |
| C. J. Wright, Houston, " " | 200 00 |
| Joe Schwander, " " | 49 90 |
| E. Tuffts, " " | 24 85 |
| Krupp & Tuffly, " " | 500 00 |
| New Braunfels Man'f'g Co. (New Braunfels) | 259 00 |
| Wm. Dissen, Houston | 54 45 |
| Cook & Valentine, New York | 97 32 |
| H'y Charnock (New Orleans, La.) | 432 60 |
| C. L. Woodbridge & Co. (New York) | 110 18 |
| A. C. Mather & Co., Chicago | 21 00 |
| New York Collar Co., N. York | 26 33 |
| Mattie Simmons (Galveston) | 505 00 |
| H. B. Claflin & Co., New York | 639 15 |
| Max Judd & Co., St. Louis | 619 60 |
| Mrs. Lizzie Justice, Houston | 26 17 |
| Eugene Rhodes, " | 22 50 |
| Rosenheim, Levis & Co., St. Louis | 125 60 |
| Quaker City Shirt Co., New York | 102 00 |
| Browning & Coyle (St. Louis, Mo.) | 74 60 |
| Thompson, Langdon & Co., New York | 144 79 |
| S. O. Cotton & Bro., Houston | 13 91 |
| Chas. C. Carpenter, New York | 14 40 |
| Wm. O. Headly & Son, New York | 75 58 |
| Warner Bros., New York | 67 09 |
| Geo. Bastian, Houston | 51 79 |

181 had all accepted the foregoing assignment, and that they are all the creditors who have accepted the assignment. The claims of said accepting creditors amount to $7,116.26, not including the claim of Mrs. McLin for about $8,000.00. The proof also showed that the defendants herein, Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., had not accepted under said assignment. There was also proof going to show that said attaching creditors all knew that plaintiff was in possession of said property; also that plaintiff deposited in bank the cash received by him in name of Louis Tuffly, assignee. The proof also went to show that defendants, Morrison, Herriman & Co., Dunham, Buckley & Co., and Wm. H. Lyon & Co., were creditors of said W. T. Tuffly, and that they obtained judgment against him in November, 1885, in the circuit court of the U. S., at Galveston, Texas, for the amount of the claims for which said attachment- were issued. The proof also showed that the property so seized by defendant Tracy, marshal as aforesaid, under said writs was the same
182 for the seizure of which this suit was brought, and there was evidence tending to show that it was worth the amount found by the jury, to wit, $17,000.00, and more.

There was also proof tending to show that at the time of making said assignment, to wit, on March 23, 1885, the firm of W. T. Tuffly was not able to pay its debts as they matured, and that said assignment was made in good faith in contemplation of insolvency, and there was also proof tending to show to the contrary.

There was also proof tending to show that Mrs. Christine E. McLin contributed to the common stock of the firm of W. T. Tuffly in cash before the filing of the certificate of special partnership the full amount which she was required by said certificate to pay in order to make her a special partner, to wit, the sum of $6,419.36. There was also evidence tending to rebut this and to show that she did not contribute the full amount required by said certificate to make her a special partner, and also tending to show that the contribution so made by her was not made in actual cash; that it was made by moneys in bank to the credit of W. T. Tuffly in liquidation, the same being proceeds of sale of goods and collections of debts due the McLin & Co. business.

183 There was also evidence tending to show that after the formation of the alleged special partnership between W. T. Truffly and Christine G. McLin, to wit, on or about the 19th day of May, 1885, an alteration and diminution was made in the capital of Mrs. Christine E. McLin in said partnership of W. T. Tuffly, and that after said alteration and diminution of her capital stock the partnership business of the firm of W. T. Tuffly was carried on continuously until March 23, 1885, and that no renewal of the partnership certificate was ever made nor other certificate made or signed nor any notice published other than that above set forth. There was also proof tending to show that Christine E. McLin owned property on March 23, 1885, in her individual right over and above that exempt by law from execution, and the proof showed that she did not join in the deed of assignment nor convey to the assignee, Louis Tuffly, her individual property.

There was also evidence introduced by plaintiff tending to rebut and contradict the above proof that an alteration was made in the capital of Mrs. Christine E. McLin in the partnership of W. T. Tuffly, and tending to show that no alteration was made therein after the formation of said partnership, and also to show that on May 20,

184 1884, Mrs. Christine E. McLin loaned to W. T. Tuffly the sum of $1,100.00; also the following amounts at the times following, viz: June 10, 1884, 1,200.00; July 15, 1884, $2,000.00; Aug. 1, 1884, $1,098.00, & Aug. 25, 1884, $2,600.00. Defendant Tracy also proved the execution and delivery to him of the indemnity bonds as set forth in the amended answer of said Tracy, filed herein April 6, 1886.

The proof also showed that neither Morrison, Herriman & Co., Dunham, Buckley & Co., nor William H. Lyon & Co. nor either of said firms or the members thereof or either of them had ever accepted or assented to the alleged assignment from W. T. Tuffly to Louis Tuffly for the benefit of creditors.

There was also proof tending to show that at the time of the alleged alteration and diminution of the capital stock of Mrs. C. E. McLin the business had not earned any profits, and that it would be impossible to call the amount withdrawn by her "profits" on the business.

In addition to the foregoing testimony and on the issue of estoppel raised by plaintiff's amended petition and replication, filed

November 17, 1885, alleging that defendants were estopped, by reason of their actings and dealings with the alleged special partnership of W. T. Tuffly, to deny that it was a special or limited partnership or to show that it was not such, the following evidence was in-
185 troduced, to wit: There was evidence tending to show that on March 26, 1884, R. W. McLin, who was then and for some time prior thereto had been a partner with W. T. Tuffly under the firm name of R. W. McLin & Co., died, leaving surviving him as his sole heirs his wife, Christine E. McLin, and their two minor children; that, after the death of said McLin, Andrew Wilson came out to Houston, representing certain of the creditors of the firm of R. W. McLin & Co., then but recently dissolved by the death of R. W. McLin, to settle up the business and claims of said creditors, and that, among other creditors, he represented and was the agent of Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., the attaching creditors mentioned in this cause; that said Wilson suggested and advised the formation of a special partnership between W. T. Tuffly and Christine E. McLin and was the man that instigated this thing and knew the whole thing; that the bills sued on and under which the attachments complained of by plaintiff were sued out were accumulated after the formation of the partnership between W. T. Tuffly and Christine E. McLin, and that all the creditors signing the document attached to the amended petition, filed Nov'r 17, 1885, dated April 24, 1884, releasing the firm of R. W. McLin & Co. and accept-
186 ing the assumption of the firm of W. T. Tuffly, knew that Mrs. McLin was a special partner; that Mrs. McLin put in $6,419.36 into the concern, and that the creditors above referred to knew of it and sold W. T. Tuffly goods after that time, and that the bills they sued on are for these goods; that said Wilson talked with Mrs. McLin a number of times and was the instigator of the whole thing, and said that there was lots of money in the business if it was well taken care of; that W. T. Tuffly said he wanted to run on a small scale, and that Wilson influenced him and talked to Mrs. McLin and said that there was no show in Houston for any second-class stores; that there was only a show for a first-class store, and that Morrison, Herriman & Co. would help W. T. Tuffly and Mrs. McLin out; that said Wilson knew they had this special partnership and sold them goods afterwards; that there was no concealment or attempt made to mislead Wilson; that he was there the whole time every day; that he virtually run the business for two or three weeks himself as agent for the creditors above named, viz., from the time he came out to Houston, some time between the first and 10th of April, 1884, until he left the State, some time about the latter part of April, 1884—say about the 23d, 24th, or 25th of April, 1884; that W. T. Tuffly notified Wilson of McLin's
187 death by telegraphing him on the night of the death, and asking him to come to Houston and represent the creditors, and that the special partnership was the result of his coming to Houston; that said firm of R. W. McLin & Co. owed a great many debts and had property, and that Mrs. Christine E. McLin sold out

her interest to W. T. Tuffly, and that he had the money in the bank at her disposal, and then Mr. Wilson induced her to become a special partner and put the money into the business; that said Wilson advised her to go into that special partnership; that her brother, W. T. Tuffly, told her he did not want her to jeopardize the money by going into the business, and that Wilson assured her that it would not jeopardise her money by going into a special partnership; that her brother all the time said that he did not want to continue business unless she could be separated from it and not have anything to do with it, and then Mr. Wilson came and spoke to her about it—of course in a friendly way—and advised her that it was the best way, and said several things to her and influenced her to go into the special partnership; that at the time Wilson came out the relations between him and W. T. Tuffly and Mrs. McLin were quite friendly,
and that Mrs. McLin imagined that at the time Wilson ad-
188 vised her in that way he was acting as her friend; that her
brother, W. T. Tuffly, did not have much to say, and that she had never met Mr. Wilson before; that the idea of W. T. Tuffly before he conferred with Wilson was to close out and not to carry on the business, and that Wilson persuaded him to carry on the business; that it was known at the time Wilson was at Houston that Mrs. McLin would have coming to her about $8,000.00 insurance money on the life of her husband as soon as it could be collected from the insurance companies, and it was expected that she would make loans to the firm.

Defendants introduced in evidence the depositions of said Andrew Wilson, tending to show that, as the representative of a large number of the creditors of the firm of R. W. McLin & Co., he caused their indebtedness to be transferred to the new firm of W. T. Tuffly, accepting the new firm instead of the old; that he did not carry the transfer from Mrs. McLin to W. T. Tuffly and get her signature to it; that he believed Mrs. McLin to be a special partner in the firm of W. T. Tuffly, and that the amount to the credit of her husband in the firm of R. W. McLin & Co., as represented by his share in
the various properties of the firm, was her contribution to the
189 special capital; also tending to show that he assisted in mak-
ing an accounting of the properties of the firm of R. W. McLin & Co. to see if the firm was solvent and in settlement of the accounts of the creditors he represented; that he represented no one but creditors and had nothing to do with forming the firm of W. T. Tuffly; that he did not advise the forming of the firm of W. T. Tuffly as it was formed or have anything to do with their act in that respect, and that he left Houston, Texas, about the 23d, 24th, or 25th of April, 1884. Defendants also introduced in evidence the following letter, to wit:

HOUSTON, *April 4th*, 1884.

Mess. Morrison, Herriman & Co., New York.

GENTLEMEN: Herewith I send you list of creditors of the late firm of R. W. McLin & Co. Since the decease of the senior member of the firm I have continued in liquidation, and my sales — flattering. I

have been disconcerted by the death of Mr. McLin, but will be able to pay in full within reasonable delay. I will withhold any payment of maturing paper until I can communicate with all creditors. Mr. Wilson, with the firm of Morrison, Herriman & Co., of your city, our largest creditor, has been communicated with, and will call on you before coming South, who can fully explain the situation.
190 I can manage to meet all liabilities with your confidence, which I hope you will extend to me, I giving you the assurance that I will reserve for your entire participation in all payments as soon as I begin to meet paper in due course, and will ask of you such concession as to time as others are willing to concede.

Hoping to receive favorable consideration at your hands, and that you will extend me your counsel and confidence,

I remain, yours truly, W. T. TUFFLY.

Also the following letter from W. T. Tuffly tc Andrew Wilson, viz:

191 "HOUSTON, *April 4th*, 1884.

FRIEND WILSON: Dispatch received last night; have mailed statement of am'ts due everybody, as requested, to all N. Y. credit-s. Business has been very good, and all I want is time from our principal creditors; have not paid anything at all yet, but deposit money as fast as it comes in; also mentioned in all the letters you would call on them; also mailed M., H. & Co. one of them, which you can see. I do not think I will have any trouble to run the business if I can get some time on all am'ts no- due, except the small bill, which I would like to pay as soon as I can, with the consent of larger creditors, of course; mail about to close; will write more fully to-morrow.

Your friend, W. T. TUFFLY."

Also the following letter from said Tuffly to said Wilson:

"HOUSTON, *April 6th*, 1884.

FRIEND WILSON: I wired you last night, and wrote you the other day, and mailed statement as requested; have not heard anything from any New York houses yet, but from closer houses have. They all seem to be satisfied so far. What I would like to do is to run the business on the same as usual, but in order to do so I will have to have some time from our princip*le* creditors (as I wrote you before), which if they grant will allow me to buy goods for cash until I can establish a credit for myself. As you know, to repl*u*tish the stock now, without money to do so, would not be an easy matter, as very few would be willing to ship goods until everything was straightened out. Business has been very good. I have reduced prices somewhat, and am selling a good many goods for cash strictly, which am depositing as fast as it comes in, and am not paying anything,
192 as I do not think it would be treating everybody concerned right to do so. Willis, of Galveston, next to M., H. & Co., are our largest creditor, and they seem to be willing to do anything that

is right, but will not say what, but write me to go on as usual; also say they are communicating with your house now. Let me hear from you as soon as possible.

Your friend, W. T. TUFFLY."

Also the following letter from said Tuffly to said Wilson, dated April 27th, 1884:

"HOUSTON, *April 27th*, 1884.

FRIEND WILSON: Enclosed find list of such things as we need now. I did not put any am't down, but want a small assortment of all, which I leave to your judgment. All of it can come by express except napkins, doyl-es, Irish linen, table covers, and pique. Business was pretty fair again yesterday—$307.00 cash. Yesterday I had quite a number of men, good citizens, to stop me on the street, and come in the store also, and tell me they were glad to see that the business was going to continue, and that I should have their custom; received your dispatch from Brenham, and see you will be in New York earlier than you expected; will go down to Galveston in the morning and get a few staples. Again thanking you for your many kind favors,

I am your friend, W. T. TUFFLY."

193 The evidence of W. T. Tuffly also showed that he advised with an attorney, Mr. Hamblen, about the special partnership and had him draw up the papers; that Wilson came out in the interest of the creditors and was a personal friend of Mrs. McLin and himself; that their relatious were friendly; that he was very anxious for Wilson to come out, and that if Wilson gave him any advice he (Tuffly) sought it and was solicitant for Wilson's good offices with the creditors, whose authority and confidence he had, and felt that Wilson had it very much in his power to assist him in starting in the new business, and he sought his advice and counsel, and also had the advice of counsel advising him and Mrs. McLin that the attorney drew the special partnership agreement and all other papers relating to the transfer; that he advised with his attorney as far as the legal part of the matter was concerned. Defendants also introduced in evidence the following petitions, affidavits, and bonds for attachment, and orders and decrees in causes No. 1327, 1328, & 1329, in the circuit court of the U. S. for the eastern district of Texas, at Galveston.

194 In the Circuit Court of the United States for the Eastern District of Texas, in the Fifth Circuit, Holding Sessions at Galveston, Texas.

To the honorable the judges of said court:

Your petitioners, George A. Morrison and John Herriman, who, in the matters hereinafter set forth were and still are copartners as merchants under the firm name and style of Morrison, Herriman, and Company, at the city of New York, in the State of New York,

and hereinafter style- plaintiffs, complaining of W. T. Tuffly, merchant, at Houston, in the county of Harris and State of Texas, respectfully represent that plaintiffs reside at the city of New York, in the county and State of New York, and that they are both citizens of the State of New York; that the defendant resides in the county of Harris, in the State of Texas, and is a citizen of the State of Texas.

That heretofore, to wit, on the second day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, six months after date thereof, the sum of six hundred and eighty-nine and $\frac{48}{100}$ dollars ($689.48), which note will be due and payable on the fifth day of April, A. D. 1885; that on the sixteenth day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, seven (7) months after date thereof, the sum of six hundred and eighty-nine and $\frac{48}{100}$
195 dollars ($689.48), which note will be due and payable on the nineteenth day of May, A. D. 1885; that on the first day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby he, defendant, promised and undertook to pay to plaintiffs or their order, seven (7) months after the date thereof, the sum of six hundred and eighty-nine and $\frac{48}{100}$ dollars ($689.48), which note will be due and payable on the fourth day of May, A. D. 1885; that on the said first day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, eight (8) months after date thereof, the sum of six hundred and eighty-nine and $\frac{49}{100}$ dollars ($689.49), which note will be due and payable on the fourth day of June, A. D. 1885.

That on the twenty-fifth day of November, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, six months after date thereof, the sum of nine hundred and seventy-four and $\frac{60}{100}$ dollars ($974.60), which note will be due and payable on the twenty-eighth day of May, A. D. 1885; that heretofore, to wit, on or about the — day of March, 1885, defendant drew his certain draft or bill of exchange on plaintiffs, requesting plaintiffs to pay to the order of the payee thereof the sum of five hundred dollars, and that on, to wit, the ninth day or [of] March, A. D. 1885, plaintiffs paid said draft or bill of exchange, and that on, to wit, the — day of March, A. D. 1885, defendant
196 drew his certain draft or bill of exchange on plaintiffs, requesting plaintiffs to pay to the order of the payee thereof the sum of two hundred and fifty dollars, and that on, to wit, the

eleventh day of March, A. D. 1885, plaintiffs paid said draft or bill of exchange; that at the time of the drawing and payment of said drafts plaintiffs were not indebted to defendant in any sum and had no funds of defendant in their hands or subject to defendant's control, but that they paid said drafts solely for the accommodation of defendant and as an advance to him of said sums of money, which were paid at the special instance and request of defendant, whereby defendant then undertook to become liable and promised to pay said sums of money whenever he should be thereunto requested; yet to pay the same or any part thereof, though long since due and unpaid, and though payment thereof has been demanded, defendant has hitherto failed and refused and still fails and refuses, to plaintiff's damage seven hundred and fifty dollars.

That heretofore, to wit, on the twelfth day of January, A. D. 1885, and on divers days subsequent thereto, at the several times specified in the account hereto annexed, marked Exhibit "A," and made part of this petition, plaintiffs, at the special instance and request of defendant, sold and delivered to the defendant certain goods, wares, and merchandise in consideration whereof defendant then undertook, promised, and agreed to pay plaintiffs, at the times hereinafter set forth, so much money as the said goods, wares, and merchandise were reasonably worth, and the same were at the time of the sale and delivery thereof reasonably worth the sums charged therefor, amounting in the aggregate to the sum of four thousand one hundred and eighty-seven dollars and ten cents ($4,187.10);
197 that defendant undertook, promised, and agreed to pay to plaintiffs said sum of money for the reasonable value of said goods at the following times, to wit: On June fifteenth, 1885, the sum of one hundred and eighty-six dollars and seventy cents ($186.70), on July fifteenth, A. D. 1885, the sum of three thousand two hundred and eight dollars and seventy-seven cents, on August 1st, A. D. 1885, seven hundred and ninety-one dollars and sixty-three cents, and that said sums of money will be due to plaintiffs from defendant on said last-named dates, respectively; that on the second day of February, A. D. 1885, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby he, defendant, undertook and promised to pay to plaintiffs or their order, fifty days after date thereof, the sum of one hundred and fifty-one dollars and fifty cents ($151.50), which note became due and payable on the twenty-seventh day of March, A. D. 1885; yet to pay the same or any part thereof, though long since due and unpaid, and though payment thereof has been demanded, defendant has hitherto failed and refused and still fails and refuses, to plaintiffs' damage one hundred and fifty-one dollars and fifty cents ($151.50).

That defendant is justly indebted to plaintiffs in said sums of money, due and to become due as hereinbefore set forth, amounting in the aggregate to eight thousand eight hundred and twenty-one dollars and thirteen cents, and that he has disposed of his property, in whole or in part, with intent to defraud his creditors. Wherefore

plaintiffs pray for process of attachment. Plaintiffs further say that the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

198 Wherefore plaintiffs sue and pray for citation, attachment, and all other proper process and, upon hearing hereof and after their said debts shall have all become due, for judgment against defendant therefor and for costs of suit, and for general relief.

And, as in duty bound, petitioners will ever pray.

C. ANSON JONES,
*Attorney for Plaintiffs.*

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, the undersigned, John Kennedy, a notary public in and for the county of Harris, in the State of Texas, on this day personally appeared Vernon Leman, to me known, who, being by me duly sworn, on oath says that he is the agent of the plaintiffs in the foregoing petition, composing the firm of Morrison, Herriman and Company, and authorized to make this affidavit in their behalf. He further says that the statements contained in the above and foregoing petition are true; that the defendant, W. T. Tuffly, is justly indebted to the plaintiffs, Morrison, Herriman & Co., in the sum of eight thousand eight hundred and twenty-one dollars and thirteen cents, due and to become due, as follows, to wit:

| | |
|---|---|
| Cash paid for his account past due (which is principal), paid, as stated in petition, on his drafts | $750 00 |
| Note due and unpaid March 27th, 1885 | 151 50 |
| Note due April 5th, 1885 | 689 48 |
| Note due May 4th, 1885 | 689 48 |
| Note due May 19th, 1885 | 689 48 |
| Note due May 28th, 1885 | 974 60 |
| Note due June 4th, 1885 | 689 49 |
| Merchandise on open account, due and payable June 15th, 1885 | 186 70 |
| Merchandise on open account, due & payable July 15th, 1885 | 3,208 77 |
| 199 Merchandise on open account, due & payable August 1st, 1885 | 791 63 |

That said W. T. Tuffly has disposed of his property, in whole or in part, with intent to defraud his creditors; that the attachment now applied for is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

VERNON LEMAN.

Subscribed and sworn to before me this the 31st day of March, A. D. 1885, to certify which I hereunto set my hand and official seal.

[SEAL.] JOHN KENNEDY,
*Notary Public in and for Harris County, Texas.*

## EXHIBIT A.

NEW YORK, *Jan'y* 12, 1885, *as Feb'y* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| A | 7 | 1 | 22½ | Hamburg inserting | 4 | | 90 |
| B | 2 | 1 | 27 | | 6 | 1 | 62 |
| | 7 | 1 | 27 | | 8½ | 2 | 29 |
| C | 1 | 1 | 22½ | | 10 | 2 | 25 |
| | 2 | 1 | 18 | | 10½ | 1 | 89 |
| | 3 | 1 | 18 | | 11 | 1 | 98 |
| | 5 | 1 | 22½ | | 12 | 2 | 70 |
| | 6 | 1 | 17½ | | 12½ | 2 | 18 |
| | 9 | 1 | 18 | | 14 | 2 | 52 |
| 200 | | | | | | | |
| D | 2 | 1 | 18 | | 15 | 2 | 70 |
| | 3 | 1 | 9 | | 15½ | 1 | 40 |
| | 4 | 1 | 13½ | | 16 | 2 | 16 |
| E | 3 | 1 | 13½ | | 20 | 2 | 70 |
| | 6 | 1 | 7½ | | 23 | 1 | 73 |
| | 9 | 1 | 12½ | | 26 | 3 | 25 |
| F | 4 | 1 | 11⅞ | | 30 | 3 | 56 |
| A | 4 | 1 | 27 | do. edging | 2½ | | 68 |
| | 5 | 1 | 29 | | 3 | | 88 |
| | 7 | 1 | 58½ | | 4 | 2 | 34 |
| | 8 | 1 | 18 | | 4½ | | 81 |
| | 9 | 1 | 27 | | 5 | 1 | 35 |
| B | 1 | 1 | 22½ | | 5½ | 1 | 23 |
| | 2 | 2 | 49½ | | 6 | 2 | 98 |
| | 3 | 2 | 39½ | | 6½ | 2 | 56 |
| | 4 | 2 | 31 | | 7 | 2 | 17 |
| | 5 | 2 | 54 | | 7½ | 4 | 05 |
| | 6 | 3 | 49½ | | 8 | 3 | 96 |
| | 7 | 3 | 58⅛ | | 8½ | 4 | 94 |
| | 8 | 1 | 22½ | | 9 | 2 | 03 |
| C | 1 | 1 | 13 | | 10 | 1 | 30 |
| | 3 | 1 | 18 | | 11 | 1 | 98 |
| | 4 | 1 | 13½ | | 11½ | 1 | 55 |
| | 5 | 1 | 22½ | | 12 | 2 | 70 |
| | 6 | 1 | 13½ | | 12½ | 1 | 68 |
| | 8 | 1 | 13½ | | 13½ | 1 | 82 |
| | 9 | 1 | 13½ | | 14 | 1 | 89 |
| D | 2 | 3 | 35½ | | 15 | 5 | 36 |
| 201 | | | | | | | |
| | 7 | 1 | 9 | | 17½ | 1 | 58 |
| E | 3 | 1 | 9 | | 20 | 1 | 80 |
| | 5 | 1 | 9 | | 22 | 1 | 98 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 7 | 2 | 18 | | 24 | ---- | 4 | 32 |
| 8 | 1 | 8 | | 25 | ---- | 2 | |
| F 1 | 1 | 13½ | Hamburg edging | 27 | ---- | 2 | 64 |
| 4 | 1 | 7½ | | 30 | ---- | 2 | 32 |
| 6 | 1 | 13½ | | 32 | ---- | 4 | 32 |
| 7 | 1 | 7½ | | 33 | ---- | 2 | 46 |
| 9 | 1 | 9 | | 35 | ---- | 3 | 15 |
| G 2 | 1 | 9 | | 37 | ---- | 3 | 33 |
| H 1 | 1 | 9 | | 45 | ---- | 4 | 05 |
| J 3 | 1 | 9 | | 62 | ---- | 5 | 58 |
| 4 | 1 | 8½ | | 65 | ---- | 5 | 53 |
| H 6 | 1 | 9 | | 50 | ---- | 4 | 50 |
| K 8 | 1 | 4½ | | 90 | ---- | 4 | 05 |
| 1,330 | 3 | doz. | ladies' solid-colored hose | 3 50 | ---- | 10 | 50 |
| 1,815 | 3 | | | 4 00 | ---- | 12 | 00 |
| 811 | 4 | bro. | Balb'n | 2 25 | ---- | 9 | 00 |
| | | | | | | 170 | 20 |

(Duplicate.)

NEW YORK, *January* 23, 1885, *as Feb'y* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | |
|---|---|---|---|---|---|---|
| 4131 | 1 | 16½ | emb'd net | 33 | 50 | $16 50 |
| 4132 | 1 | 16½ | | | | |

(Duplicate.)

202 NEW YORK, *Feb'y 6th*, 1885, *as March* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | |
|---|---|---|---|---|---|---|
| F | 1 | 64½ | beige. | | | |
| E | 1 | 67 | | | | |
| H | 1 | 67 | | | | |
| A | 1 | 67½ | | | | |
| | | | | 266 | 16½ | 43 93 |
| 101 | 1 | 33 | | | | |
| 112 | 1 | 33 | figured do. | | | |
| | | | | 66 | 32½ | 21 45 |
| Black | 1 | 57⅞ | albatross. | | | |
| D | 1 | 56⅜ | | | | |
| C | 1 | 49¾ | | | | |
| B | 1 | 52 | | | | |
| F | 1 | 54⅜ | | | | |
| | | | | 270⅜ | 50 | 135 19 |
| B | 1 | 39⅞ | myosotis. | | | |
| E | 1 | 39¾ | | | | |
| D | 1 | 39⅜ | | | | |
| Bl'k | 1 | 39⅞ | | | | |
| | | | | 158⅞ | 57½ | 91 35 |

| | | | | | |
|---|---|---|---|---|---|
| F | 1 | 37⅛ crepeline. | | | |
| H | 1 | 36⅞ | | | |
| Black | 1 | 37⅛ | | | |
| | | 111⅛ | | 65 | 72 23 |
| B | 1 | 51¾ nun's veiling. | | | |
| C | 1 | 53¾ | | | |
| A | 1 | 47½ | | | |
| H | 1 | 53½ | | | |
| Black | 1 | 50½ | | | |
| N | 1 | 53 | | | |
| I | 1 | 53 | | | |
| | | 363 | | 16½ | 59 93 |
| 10 | 1 | 51 met. bl'k cashmere, 55 | | 33½ | 16 51 |
| 3468 | 1 | 43 yds. bunting | | 19 | 8 17 |
| 2560 | 1 | 43 ex | | 25 | 10 75 |
| | 1 | 54¾ D. W. | | 37½ | 20 52 |
| | | | | | 482 03 |

(Duplicate.)

203 NEW YORK, *Feb.* 13, 1885.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | |
|---|---|---|---|---|---|
| 1 | 1 | 30–80 met. reversed muslin | | 45 | 13 88 |
| 16 | 1 | 32–30 | | 50 | 16 15 |
| 7715 | 1 | 28 batiste. | | | |
| 7728 | 1 | 26–50 | | | |
| 7714 | 1 | 26 | | | |
| 7711 | 1 | 28 | | | |
| 15206 | 1 | 28 printed do. | | | |
| | | 136–50 | | 32½ | 44 36 |
| 11727 | 1 | 52–80 4–4 p't'd organdie. | | | |
| 11304 | 1 | 51–20 | | | |
| 11802 | 1 | 54–90 4–4 | | | |
| | | 158–90 | | 35 | 55 62 |
| | | | | | 130 01 |
| | | Add 1/12 for metres | | | 10 54 |
| | | | | | 140 85 |
| 5 | 20 | 400 check nainsook | | 7 | 28 |
| 10 | 10 | 200 | | 8½ | 17 |
| 15 | 5 | 100 | | 11 | 11 |
| 20 | 5 | 99¾ | | 12½ | 12 47 |
| BB | 5 | 120 | | 14 | 16 80 |
| 41 | 3 | 72 | | 17 | 12 24 |
| 51 | 4 | 96 | | 19 | 18 24 |
| 61 | 5 | 120 | | 22½ | 27 |
| 8 | 20 | 400 Victoria lawn | | 7 | 28 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 9 | 15 | 360 | | 8½ | 30 | 60 |
| 29 | 10 | 200 | | 10 | 20 | |
| 49 | 10 | 200 | | 12 | 24 | |
| 69 | 5 | 120 | | 14 | 16 | 80 |
| 79 | 5 | 120 | | 16½ | 19 | 80 |
| 204 | | | | | | |
| 4 | 5 | 120 | India lawn | 12 | 14 | 40 |
| 75 | 5 | 120 | | 16 | 19 | 20 |
| 100 | 5 | 120 | | 19 | 22 | 80 |
| 200 | 5 | 120 | | 22½ | 27 | |
| IN | 2 | 48 | Persian | 18 | 7 | 20 |
| O | 2 | 48 | | 19 | 9 | 12 |
| R | 2 | 48 | | 27½ | 13 | 20 |
| T | 2 | 48 | | 40 | 19 | 20 |
| | 3 | 143 | pique | 7½ | 10 | 72 |
| R | 1 | 41½ | | 40 | 16 | 60 |
| 3 | 1 | 56 | cord- do. | 12 | 6 | 72 |
| 4 | 1 | 52½ | | 16 | 8 | 40 |
| 10 | 1 | 41 | | 20 | 8 | 20 |
| 72 | 1 | 52½ | Swiss satin c'k | 20 | 10 | 50 |
| 86 | 2 | 102 | 19 fr. | 17½ | 17 | 85 |
| x-1.4 | 2 | 60 | figured Swiss | 10 | 6 | |
| a-3.57 | 3 | 73 | | 12½ | 9 | 12 |
| B-9 | 1 | 25 | | 15 | 3 | 75 |
| 132 | 1 | 20 | | 37½ | 7 | 50 |
| 146 | 1 | 20 | | 45 | 9 | |
| 200 | 1 | 20 | col'd | 47½ | 9 | 50 |
| 206 | 1 | 20 | | 50 | 10 | |
| 220 | 1 | 20 | 70 fr. | 65 | 13 | |
| | 1 | 49½ | crazy cloth | 19 | 9 | 41 |
| E | 1 | 19¾ | all-over tuck | 60 | 11 | 85 |
| 150 | 5 | | pr. brown stenter book | 70 | 3 | 50 |
| 150 | 20 | | bl'k | 70 | 14 | |
| 7 | 1 | 24 | blea. huck | 22 | 6 | 38 |
| 205 | | | | | | |
| 527 | 2 | 80 | bro. drill | 17 | 3 | 60 |
| 60 | 1 | 39 | | 25 | 9 | 75 |
| 64 | 1 | 41 | stripe | 19 | 7 | 84 |
| 2 | 1 | 51 | Hastings c'k | 25 | 12 | 75 |
| SS | 1 | 47 | Brighton | 35 | 16 | 54 |
| 5 | 1 | 52 | 40–2 pillow linen | 37½ | 19 | 50 |
| 12 | 5 | 207 | printed linen lawn | 30 | 62 | 17 |
| 8 | 3 | 122½ | | 19 | 23 | 27 |
| 6 | 8 | 314 | | 15 | 47 | 14 |
| 7 | 5 | 208 | wh-t- Union " | 15 | 31 | 24 |
| 9 | 3 | 126 | | 21 | 26 | 46 |
| 12 | 3 | 130 | | 27½ | 35 | 75 |
| 18 | 2 | 85½ | | 37½ | 32 | 06 |
| S | 1 | 29 | loom damask | 80 | 23 | 40 |

| | | | | | |
|---|---|---|---|---|---|
| 19 | 1 | 42¾ bleached " | 45 ---- | | 19 24 |
| 12 | 1 | 46 | 60 ---- | | 27 60 |
| 45 | 1 | 37½ 1⅝ | 77½---- | | 29 06 |
| 1.34 | 2 | 40 Turkey " | 37½---- | | 15 |
| 7.10 | 2 | 37 58 | 50 ---- | | 18 50 |
| 990 | 1 | 19¾ | 67½---- | | 13 34 |
| 10 | 1 | 20¾ cardinal " | 90 ---- | | 18 67 |
| | 4 | 7–4 Turkey cloths | 1 ---- | | 4 |
| | 4 | 8–4 | 1 60 ---- | | 6 40 |
| | 4 | 8–10 | 2 ---- | | 8 |
| | 3 | col'd bord. loom | 1 85 ---- | | 5 55 |
| | 2 | 7–4 col'd Union | 1 25 ---- | | 2 50 |
| | 3 | 10–4 | 1 90 ---- | | 5 70 |
| | 3 | dz. col'd Un. doylies | 1 25 ---- | | 3 75 |
| | 6 | " loom " | 1 20 ---- | | 7 20 |
| 18 | 5 | ⅝ napkins | 1 75 ---- | | 8 75 |
| | | | | | 1,301 62 |

Duplicate.

206 NEW YORK, *February* 14, 1885, *as March* 15.

Messrs. W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

(Duplicate.)

| | | | | | |
|---|---|---|---|---|---|
| 387 | 1 | 20–60 b'k Spanish net | 1 50 ---- | | 30 90 |
| 735 | 1 | 12–10 | 2 50 ---- | | 30 85 |
| 735 | 1 | 14 cream | 2 50 ---- | | 35 |
| 8648 | 1 | 22 lace | 40 ---- | | 8 80 |
| 14 | 1 | 33 bl'k | 40 ---- | | 13 20 |
| 5348 | 1 | 33 | 45 ---- | | 14 85 |
| 663 | 1 | 42–90 | 18 ---- | | 7 72 |
| 664 | 1 | 35 | 20 ---- | | 7 |
| 13 | 1 | 34 | 32 ---- | | 10 88 |
| 238 | 1 | 31–50 Oriental lace | 10 ---- | | 3 15 |
| 218 | 1 | 36 | 12 ---- | | 4 32 |
| 141 | 1 | 44 Torchon ins't'g | 6½---- | | 2 86 |
| 4025 | 1 | 35–40 | 8½---- | | 3 |
| 2066 | 1 | 44 | 12 ---- | | 5 28 |
| 493 | 1 | 34 | 13½---- | | 4 59 |
| 1619 | 1 | 41 | 14 ---- | | 5 74 |
| 1611 | 1 | 48–50 | 20 ---- | | 9 70 |
| 4687 | 1 | 41 | 25 ---- | | 10 25 |
| 1162 | 1 | 42 | 25 ---- | | 10 50 |
| 1176 | 1 | 45 | 30 ---- | | 13 50 |
| 139 | 1 | 49–20 lace | 3 ---- | | 1 48 |
| 120 | 1 | 42 | 4 ---- | | 1 68 |
| 4712 | 1 | 39–80 | 5 ---- | | 1 99 |

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| | | | | | |
|---|---|---|---|---|---|
| 104 | 1 | 41–80 | 5 ---- | | 2 09 |

| | | | | | |
|---|---|---|---|---|---|
| 103 | 1 | 41–80 | 5 | | 2 09 |
| 110 | 1 | 48 | 7 | | 3 36 |
| 137 | 1 | 44 | 7 | | 3 08 |
| 107 | 1 | 48 | 6 | | 2 88 |
| 183 | 1 | 44 | 9 | | 4 41 |
| 203 | 1 | 60–20 | 9 | | 3 61 |
| 197 | 1 | 38 | 10½ | | 3 99 |
| 262 | 1 | 38–40 | 12 | | 4 61 |
| 269 | 1 | 36–40 | 12½ | | 4 54 |
| 6068 | 1 | 44 | 13 | | 5 72 |
| 503 | 1 | 48–70 | 15 | | 7 30 |
| 10 | 1 | 34–80 | 17 | | 5 92 |
| 52 | 1 | 40–50 | 23 | | 9 32 |
| 2651 | 1 | 32 bl'k escl. | 35 | | 11 20 |
| 10487 | 1 | 22–10 | 40 | | 48 84 |
| 124 | 1 | 22 | 60 | | 13 20 |
| | | | | | 332 80 |
| | | Add $\frac{1}{12}$ for metres | | | 27 74 |
| | | | | | 360 54 |
| 5496 | 1 | 36 Spanish lace | 16 | | 5 76 |
| 5700 | 1 | 36 cream | 11½ | | 4 14 |
| 5703 | 1 | 36 | 22 | | 7 92 |
| 1367 | 1 | 3 Val. | 50 | | 1 50 |
| 2603 | 1 | 3 | 1 05 | | 3 15 |
| 253 | 1 | 3 | 1 35 | | 4 05 |
| 11883 | 1 | 3 ins't'g | 55 | | 1 65 |
| 8495 | 1 | 3 | 55 | | 1 65 |
| 6784 | 4 | crochet lace | 11½ | | 46 |
| 6822 | 8 | | 15 | | 1 20 |
| 6813 | 4 | | 17½ | | 70 |

208

| | | | | | |
|---|---|---|---|---|---|
| | 6 | 150 Hernani | 30 | | 45 |
| S | 1 | 27½ 72″ white silk illusion | 65 | | 17 87 |
| 150 | 1 | 26 36″ ivory | 27 | | 7 02 |
| CL | 1 | 24¾ " cream | 35 | | 8 66 |
| 150 | 1 | 27 col'd | 30 | | 8 10 |
| O1 | 1 | 14 4–4 Eng. crape | 60 | | 8 40 |
| 1110 | 6 | net curtains | 1 25 | | 7 50 |
| 1112 | 4 | | 1 75 | | 7 00 |
| 1113 | 6 | | 2 25 | | 13 50 |
| 1090 | 4 | | 3 | | 12 00 |
| 1097 | 4 | | 3 75 | | 15 |
| 4505 | 1 | 50 curtain net | 12 | | 6 |
| 9264 | 1 | 59½ | 20 | | 11 90 |
| 9271 | 1 | 54½ | 23 | | 12 53 |
| 1025 | 1 | 52 | 28 | | 13 06 |
| 9246 | 1 | 40¾ | 30 | | 12 22 |
| 6164 | 1 | 38 ecru | 23 | | 8 74 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 4 | 1 | 27 | cheese-cloth | | | 10 | ---- | 10 | 55 |
| 4 | 1 | 25 | | | | | | | |
| 1 | 1 | 53½ | | | | | | | |
| | | 105½ | | | | | | | |
| 6876 | 1 | 4 | Swiss emb'd'y | | | 25 | ---- | 1 | |
| 3295 | 1 | 4 | | | | 35 | ---- | 1 | 40 |
| 3176 | 1 | 3 | | | | 40 | ---- | 1 | 20 |
| 3301 | 1 | 4 | | | | 40 | ---- | 1 | 60 |
| 3247 | 1 | 4 | | | | 45 | ---- | 1 | 80 |
| 3240 | 1 | 3 | | | | 45 | ---- | 1 | 35 |
| 3181 | 1 | 3 | | | | 50 | ---- | 1 | 50 |
| 3280 | 1 | 3 | | | | 50 | ---- | 1 | 50 |
| 3217 | 1 | 3 | | | | 50 | ---- | 1 | 50 |
| 3300 | 1 | 3 | | | | 55 | ---- | 1 | 65 |
| 209 | | | | | | | | | |
| 3237 | 1 | 3 | | | | 60 | ---- | 1 | 80 |
| 3232 | 1 | 3 | | | | 65 | ---- | 1 | 95 |
| 6640 | 1 | 3 | | | | 70 | ---- | 2 | 10 |
| 6893 | 1 | 3 | | | | 75 | ---- | 2 | 25 |
| 3218 | 1 | 3 | | | | 75 | ---- | 2 | 25 |
| 3174 | 1 | 3 | | | | 80 | ---- | 2 | 40 |
| 3163 | 1 | 3 | | | | 90 | ---- | 2 | 70 |
| 3227 | 1 | 3 | | | 1 | 20 | ---- | 3 | 60 |
| 6638 | 1 | 3 | | | 2 | 10 | ---- | 6 | 30 |
| 4130 | 1 | 14½ | net | | | 38 | ---- | 5 | 51 |
| 4115 | 1 | 17¾ | | | | 60 | ---- | 8 | 87 |
| 4111 | 1 | 14 | | | | 80 | ---- | 11 | 40 |
| 2282 | 1 | 9 | all-over emb'd'y | | 1 | 25 | ---- | 11 | 25 |
| 7988 | 1 | 9 | | | 1 | 75 | ---- | 15 | 75 |
| 8442 | 1 | 9 | | | 2 | 25 | ---- | 20 | 25 |
| 1950 | 1 | 6–12 | inf'ts' fancy hose | | 1 | 50 | ---- | 2 | 25 |
| 1954 | 1 | 6–12 | | | 2 | 25 | ---- | 3 | 37 |
| 600 | 8 | men's | | | 1 | 75 | ---- | 14 | |
| 4434 | 8 | solid colors | | | 2 | 25 | ---- | 18 | |
| 1845 | 5 | 6–12 | ribbed | | 5 | 75 | ---- | 2 | 88 |
| | 5½ | 6–12 | | | 6 | 25 | ---- | 3 | 12 |
| | 6 | 6–12 | | | 6 | 75 | ---- | 3 | 37 |
| | 6½ | 6–12 | | | 7 | 25 | ---- | 3 | 62 |
| | 7 | 6–12 | | | 7 | 75 | ---- | 3 | 88 |
| | 7½ | 6–12 | | | 8 | 25 | ---- | 4 | 12 |
| | 8 | 6–12 | | | 8 | 75 | ---- | 4 | 30 |
| | 8½ | 6–12 | | | 9 | 25 | ---- | 4 | 62 |
| 200 | 2 | b'n mixed | | | | 90 | ---- | 1 | 80 |
| 200 | 6 | ladies' f'cy | | | 2 | | ---- | 12 | |
| 210 | | | | | | | | | |
| 417 | 3 | | | | 1 | 75 | ---- | 5 | 25 |
| 296 | 3 | | | | 2 | 25 | ---- | 6 | 75 |
| 1345 | 3 | solid colors | | | 3 | 75 | ---- | 11 | 25 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 3200 | 3 | | 3 | 50 | | 10 50 |
| 610 | 3 | | 1 | 75 | | 5 25 |
| 678 | 6 | B. Balb. | 4 | | | 24 |
| 1120 | 3 | | 6 | | | 18 |
| 1129 | 3 | Brit. lisle | 9 | | | 27 |
| 1925 | 6–12 | | | | | |
| 1935 | 6–12 | ladies' f'cy lisle | 7 | 50 | | 15 |
| 1930 | 6–12 | | | | | |
| 1920 | 6–12 | | | | | |
| 315–9 | 1 | sup'r Br. cot'n, ½ | | | | 2 |
| 9½ | 1 | | | | | 2 13 |
| 10 | 1 | | | | | 2 25 |
| 10½ | 1 | | | | | 2 37 |
| 11 | 1 | | | | | 2 50 |
| 908–6 | 1 | lisle gloves | | | | 2 |
| 715–6 | 1 | | | | | 3 50 |
| 790–6 | 1 | | | | | 2 75 |
| 860–6 | 1 | | | | | 6 |
| 895–8 | 1 | | | | | 7 50 |
| 765 | 1 | | | | | 6 |
| 1890 | 1½ | | 3 | 50 | | 5 25 |
| 1805 | 2 | | 2 | 25 | | 4 50 |
| 509 | 1 | | | | | 3 50 |
| 1825 | 1 | | | | | 5 50 |
| 826 | 1 | | | | | 6 |
| 1092 | 1 | | | | | 7 50 |
| 1800 | 1 | bl'k | | | | 2 25 |
| 719 | 1 | | | | | 4 50 |
| 211 | | | | | | |
| 1820 | 1 | | | | | 5 50 |
| 826 | 1 | | | | | 6 |
| 1092 | 1 | | | | | 7 50 |
| 10 | 1 | 20 A. O. tuck | | | 32½ | 6 50 |
| 390 | 5 | 10–10 Torbit quilt | 3 | | | 15 |
| 500 | 5 | | 4 | | | 20 |
| 125 | 5 | | 1 | 90 | | 9 50 |
| | 5 | 18″ cot'n draper | | | 50 | 2 50 |
| | 5 | 22″ | | | 60 | 3 |
| | 5 | 24 | | | 65 | 3 25 |
| | 5 | 27 | | | 72½ | 3 62 |
| x | 2 | 80 crash | | | 9 | 7 20 |
| 2 | 2 | 80 toweling | | | 8½ | 6 80 |
| 6–1 | 1 | 58 | | | | |
| 103 | 1 | 48 | | | | |
| | | 106 | | | 15 | 15 90 |
| 5 | 1 | 40 16 roll. crash | | | 10½ | 4 20 |
| 10 | 1 | 40 18 | | | 11½ | 4 60 |
| 25 | 1 | 40 20 | | | 12½ | 5 |
| | 5 | Turkey doylies | | | 38 | 1 90 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 5 | | | | 55 | | 2 75 |
| 5 | | | | 80 | | 4 00 |
| 5 | 18 | | 1 | 25 | | 6 25 |
| 20 | glass | | | 50 | | 10 00 |
| 10 | | | | 75 | | 7 50 |
| G 10 | dam'k | | | 85 | | 8 50 |
| 5 | 24 | | 1 | 75 | | 8 75 |
| 11 6 | 17 x 36 loom dam'k towels | | 1 | 75 | | 10 50 |

212

| | | | | | | |
|---|---|---|---|---|---|---|
| 50 | 4 | 20 x 40 k. f. | 2 | 50 | | 10 |
| 114 | 4 | 22 x 45 | 3 | | | 12 |
| 55 | 1 | 22 x 40 dam'k | | | | 5 |
| 125 | 4 | huck | | 75 | | 3 00 |
| 203 | 2 | Turkish | 3 | 50 | | 7 |
| 104 | 1 | | | | | 4 25 |
| 7 | 6–12 | | 5 | 50 | | 2 75 |
| 6 | 10 | 5–8 napkin | | 62½ | | 6 25 |
| o | 5 | 3–4 h. s. handk'f | 2 | | | 10 |
| 1 | 2 | | 2 | 50 | | 5 00 |
| 3 | 2 | | 3 | | | 6 |
| 30 | 2 | | 5 | 50 | | 11 |
| 93 | 3 | 4–8 | 1 | 50 | | 4 50 |
| 95 | 2 | | 2 | | | 4 |
| 7 | 2 | | 2 | 37½ | | 4 75 |
| 9 | 2 | | 3 | | | 6 |
| 24 | 2 | | 3 | 25 | | 6 50 |
| 25 | 2 | | 4 | | | 8 00 |
| 734 | 2 | mourning | 2 | | | 4 |
| 737 | 1 | | 2 | 45 | | 2 45 |
| 570 | 1 | | | | | 3 25 |
| 404 | 1 | | | | | 2 12 |
| 67 | 1 | 51–50 met. bl'k cashmere, 55⅞ yds. | | 57½ | | 32 13 |

$1,359 27

213 NEW YORK, *February* 14, 1885.

Mr. W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co.

| | | | | | | |
|---|---|---|---|---|---|---|
| L O | 1 | 46¾ Richardson's linen | | 20 | | $9 35 |

Duplicate.

NEW YORK, *February* 14, 1885, *as March* 15.

Messrs. W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | |
|---|---|---|---|---|---|---|
| 905 | 1 | metropolitan plaiting | | | | 3 75 |
| 4001 | 1 | | | | | 5 25 |
| 217 | 1 | | | | | 6 |

16—134

| | | | |
|---|---|---|---|
| 1146 | 1 | ---------- | 5 50 |
| 251 | 1 | ---------- | 8 50 |
| | | | $29 00 |

(Duplicate.)

NEW YORK, *Feb.* 16, 1885, *as March* 15.

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | |
|---|---|---|---|
| 172 | 1 | embroidered robe ---------- | 3 50 |
| 106 | 1 | ---------- | 4 50 |
| 161 | 1 | ---------- | 6 |
| 12984 | 1 | ---------- | 6 |
| 297 | 1 | ---------- | 7 50 |
| | | | 27 50 |

(Duplicate.)

214 NEW YORK, *Feb.* 20, 1885, *as April 1st.*

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | |
|---|---|---|---|---|---|
| 6103 | 1 | 36 ecru & wht. cott. lace---------- | 6 | ---- | 2 16 |
| 6106 | 1 | 36 ---------- | 13 | ---- | 4 68 |
| 6108 | 1 | 36 col'd ---------- | 8 | ---- | 2 88 |
| 6110 | 1 | 36 ---------- | 12½ | ---- | 4 50 |
| 6137 | 1 | 36 ---------- | 10 | ---- | 3 60 |
| 6140 | 1 | 36 ---------- | 10 | ---- | 3 60 |
| 6141 | 1 | 36 ---------- | 12½ | ---- | 4 50 |
| 6139 | 1 | 24 ---------- | 16½ | ---- | 3 96 |
| 6171 | 1 | 36 ecru & gold ---------- | 10 | ---- | 3 60 |
| 6152 | 1 | 36 tinsel ---------- | 15½ | ---- | 5 58 |
| 6153 | 1 | 36 ---------- | 20 | ---- | 7 20 |
| 6111 | 1 | 36 antique ---------- | 12½ | ---- | 4 50 |
| 6113 | 1 | 24 ---------- | 20 | ---- | 4 80 |
| 2141 | 1 | 36 ecru ---------- | 12½ | ---- | 4 50 |
| 2143 | 1 | 24 ---------- | 20 | ---- | 4 80 |
| 369 | 1 | metropolitan plaiting ---------- | | | 2 90 |
| 4880 | 1 | ---------- | | | 2 50 |
| 4798 | 1 | ---------- | | | 2 90 |
| 1135 | 1 | ---------- | | | 4 |
| 1139 | 1 | ---------- | | | 4 25 |
| 1164 | 1 | ---------- | | | 4 80 |

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| | | | | | |
|---|---|---|---|---|---|
| 1787 | 3–12 | collars---------- | 7 50 | ---- | 1 87 |
| 1788 | 3–12 | ---------- | 8 75 | ---- | 2 19 |
| 1785 | 3–12 | ---------- | 11 50 | ---- | 2 88 |
| 1000 | 2 | linen do.---------- | 1 25 | ---- | 2 50 |
| 904 | 3 | ---------- | 1 75 | ---- | 5 25 |
| 1040 | 3 | ---------- | 1 40 | ---- | 4 20 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 1030 | 3 | | | | 1 | 40 | | 4 20 |
| 1115 | 4 | | | | 2 | | | 8 |
| 1024 | 3 | | | | 1 | 75 | | 5 25 |
| 26 B | 1 | cuffs | | | | | | 1 25 |
| 19 | 3 | | | | 1 | 40 | | 4 20 |
| 110 | 2 | | | | 1 | 85 | | 3 70 |
| 517 *c* | 1 | h. s. & emb'd handk'fs | | | | | | 2 50 |
| 317 | 1 | | | | | | | 2 75 |
| 11 | 1 | embroidered robe | | | | | | 3 75 |
| 8514 | 1 | | | | | | | 5 |
| 8515 | 1 | dz. misses' bl'k hose | | | | | | 6 |
| 815 | 8 | | fancy | | 2 | 25 | | 18 |
| 4671 | 1 | | | | | | | 1 37 |
| 4675 | 6 | | solid color | | 3 | 50 | | 21 |
| 4592 | 6 | dz. misses' solid-color hose | | | 1 | 62½ | | 9 75 |
| 6753 | 4 | | col'd Balb'n | | 3 | 50 | | 14 |
| 1245 | 3 | ladies' bl'k | | | 4 | 50 | | 13 50 |
| 90 | 3 | brilliant lisle | | | 6 | 50 | | 19 50 |
| 105 | 1½ | | | | 6 | 50 | | 9 75 |
| 1915 | 2 | 4–12 | | | 7 | 50 | | 17 50 |
| 5006 | 1 | silk plaited | | | | | | 12 |
| 5010–10 | 1 | gloves | | | | | | 9 |
| 4010–10 | 1 | | | | | | | 9 |

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| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 4030 | 1 | | | | | | | 12 |
| 4075 | 1 | | | | | | | 12 |
| 29 | 1 | 50 Saxony cord CK | | | | 10½ | | 5 25 |
| 12 | ½ | doz. 20–46 knot-fringe towels | | | 10 | 00 | | 5 |
| | 1 | | tidies | | | | | 10 |
| 154 | 2 | | 3–4 h'm'd & p't'd handk'fs | | | 75 | | 1 50 |
| 104 | 2 | | | | 1 | 05 | | 2 10 |
| 1402 | 1 | | | | | | | 2 50 |
| 652 | 1 | | | | | | | 3 50 |
| A | 2 | | 3–8 h. s. & p't'd | | 1 | 25 | | 2 50 |
| 601 | 1 | | | | | | | 1 15 |
| 824 | 1 | | | | | | | 1 15 |
| 665 | 5 | | | | 1 | 50 | | 7 50 |
| 662 | 1 | | | | | | | 1 50 |
| 179 | 1 | | | | | | | 1 60 |
| 829 | 1 | | | | | | | 1 85 |
| 483 | 1 | | | | | | | 2 |
| 669 | 1 | | | | | | | 2 30 |
| 487 | 1 | | | | | | | 2 35 |
| 260 | 1 | | | | | | | 3 |
| 492 | 1 | | | | | | | 3 50 |
| 883 | 1 | | 3–4 | | | | | 2 50 |
| 671 | 1 | | | | | | | 2 75 |
| 767 | 1 | | | | | | | 4 |
| 35 | 1 | | | | | | | 4 75 |
| 650 | 1 | | ivory | | | | | 2 50 |

| | | | | | |
|---|---|---|---|---|---|
| 664 | 5 | cot. h'm'd & p't'd | 70 | | 3 50 |
| 2 | 1 | 55½ English plaid. | | | |
| 16 | 1 | 53½ | | | |
| 10 | 1 | 55½ | | | |
| | | —164½ | 20 | | 32 90 |
| 6 | 1 | 65′ | | | |
| 3 | 1 | 64½ | | | |
| 1 | 1 | 64′ | | | |
| | | —194 | 21 | | 40 74 |
| | | | | | 483 96 |

(Duplicate.)

217 NEW YORK, *Feb'y* 28, 1885, *as April 1st.*

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | |
|---|---|---|---|---|---|
| 124 | 1 | 22–50 met. Oriental lace | 7 | | 1 57 |
| 216 | 1 | 36 | 8 | | 2 88 |
| 205 | 1 | 36 | 8½ | | 3 06 |
| 134 | 1 | 22–50 | 9 | | 2 03 |
| | | | | | 9 54 |
| | | Add 1/12 for metres | | | 79 |
| | | | | | 10 33 |
| 100–101 | 2 | 105 yds. manilla ck. | 10 | | 10 50 |
| Opera. | 5 | 264¾ silesia | 8 | | 21 18 |
| 2745 | 1 | 55 emb'd mohair. | | | |
| 2733 | 1 | 48 | | | |
| 2751 | 1 | 52 | | | |
| | | —155 | 27½ | | 42 62 |
| Bl'k | 1 | 59⅞ crepon, job | 40 | | 23 95 |
| 11–a | 1 | 54⅞ albatross | 50 | | 27 45 |
| | | | | | 136 03 |

(Duplicate.)

NEW YORK, *March* 4, 1885, *as April 1st.*

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

218

| | | | | | |
|---|---|---|---|---|---|
| 8508 | 2 | embroidered robes | 6 00 | | 12 00 |
| 8510 | 1 | | | | 7 25 |
| 24 | 1 | 29 nuns' veiling. | | | |
| 8 | 1 | 58 | | | |
| 22 | 1 | 56 | | | |
| 26 | 1 | 57 | | | |
| | | —200 216⅔ | 29 | | 62 83 |
| | | | | | 82 08 |

(Duplicate.)

NEW YORK, *March* 12, 1885, *as April 1st.*

W. T. Tuffly, Houston, Texas, bought of Morrison, Herriman & Co., importers, 503 and 505 Broadway.

| | | | | | | |
|---|---|---|---|---|---|---|
| 3070 | 3 | 97–20 | met. col'd silk lace---------- | 23 ---- | 22 | 35 |
| 3071 | 3 | 99 | ---------- | 18½---- | 18 | 31 |
| | | | | | 40 | 66 |
| | | | Add $\frac{1}{12}$ for metres---------- | | 3 | 40 |
| | | | | | 44 | 06 |
| F. | 1 | 37⅛ | crepeline. | | | |
| G. | 1 | 32⅞ | | | | |
| | | 70----- | ---------- ---------- | 65 ---- | 45 | 50 |
| | | | | | 89 | 56 |

(Duplicate.)

The foregoing petition and exhibit endorsed as follows: "No. 1327, C. L. Morrison, Herriman & Co. *vs.* W. T. Tuffly. Original petition and affidavit for attachment. Filed March 31, 1885. C. Dart, clerk."

219 *Verdict of Jury Written on Petition and Affidavit for Attachment.*

"We, the jury, find for plaintiffs, debt and interest to date, nine thousand and thirty-one $\frac{33}{100}$ dollars ($9,031.33), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

*Attachment Bond. Filed March* 31, '85.

THE STATE OF TEXAS, *County of Harris:*

In Circuit Court of the United States, Eastern District of Texas, at Galveston.

MORRISON, HERRIMAN & Co. *vs.* W. T. TUFFLY.

We, the undersigned, Morrison, Herriman & Co., as principals, and Wm. D. Cleveland and C. Lombardi and S. K. McIlhenny, as sureties, acknowledge ourselves bound to pay to W. T. Tuffly the sum of nineteen thousand dollars, conditioned that the above-bound Morrison, Herriman & Co., plaintiffs in attachment against the said W. T. Tuffly, defendant, will prosecute their said suit to effect, and that they will pay all such damages and costs as shall be adjudged against them for wrongfully suing out such attachment.

Witness our hands this 31st day of March, A. D. 1885.

MORRISON, HERRIMAN & CO.,
By VERNON LEMAN, *Agent.*
WM. D. CLEVELAND.
C. LOMBARDI.
S. K. McILHENNY.

Approved.
C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

220 Endorsements: "No. 1327. Morrison, Herriman & Co. *vs.* W. T. Tuffly. Attachment bond. Filed March 31, 1885. C. Dart, clerk."

*Citation for W. T. Tuffly. Issued April 3rd, 1885.*

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon W. T. Tuffly, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the second day of November next, to answer the petition of Geo. A. Morrison & Jno. Herriman, composing the firm of Morrison, Herriman & Co., filed M'ch 31, '85 (cause No. 1327), against him, the said W. T. Tuffly, in an action of debt on promissory notes and open account, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the [SEAL.] circuit court thereof, at Galveston, this third day of April, in the year of our Lord eighteen hundred and eighty-five and of American Independence the one hundred and ninth year.

221

C. DART,
*Clerk Eastern District Texas, at Galveston,*
By W. L. HANSCOM, *Deputy.*

*Marshal's Return.*

Received this writ on the 3d day of April, 1885, and I executed the same on the 4th day of April, 1885, by delivering to the within-named defendant, in Houston, in person, a true copy of this writ and a copy of the petition, certified by the clerk of this court.

J. C. TRACY,
*U. S. Marshal.*

Endorsements: "C. L., No. 1327. Morrison, Herriman & Co. *vs.* W. T. Tuffly. Issued 3d day of April, A. D. 1885. C. Dart, clerk U. S. court, E. D. T., Galveston, by W. L. Hanscom, deputy. Returned and filed April 6th, 1885. C. Dart, cl'k, by Geo. C. Rives, dept."

*Order.*

From Minutes, March Term, April 17, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

On this 17th day of April, 1885, came on to be heard the application of the plaintiffs in this cause for an order directing the sale of the personal property seized under writ of attachment issued in this cause; and it appearing to the court from said application and the affidavit of the plaintiffs' agent and the certificate of the marshal in support thereof and from the evidence that the keeping of
222 said property until the trial of this cause will necessarily be attended with such expenses and deterioration in the value of the property as greatly to lessen the amount likely to be realized therefrom, and that it is to the interest of all parties to the cause that said property be sold as soon as possible, the court doth order, adjudge, and decree that said property, to wit, the stock of dry-goods now in the store in the Burns building, on the corner of Main and Prairie streets, in the city of Houston, Texas, and also the furniture and fixtures and all personal property, of whatever kind, in said store, levied upon and now in the hands of the marshal, as fully set forth in his return upon the said writ of attachment on file herein, be sold by the marshal as under execution, and the time for the advertisement of said sale is hereby fixed at five days. In addition to the posting of notices in the usual form, the marshal is hereby authorized and directed to cause a brief notice of the time, place, and terms of said sale to be published in the Houston Daily Post and the Galveston Daily News, and will include the expense thereof in the costs. The clerk of this court will issue the necessary order of sale, which the marshal will execute and make return thereof with the proceeds of said sale, according to the statutes in such cases made and provided, and pay said proceeds into the registry of the court.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

Upon application of the plaintiffs, by their attorney, the marshal is permitted to amend his return upon the writ of attachment issued in this case.

223 *Default Judgment.*

From Minutes, November Term, Nov. 6, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

On this day came the plaintiffs, by their attorney, and the defendant, having been duly served with process, came not, but wholly made default; wherefore it is considered and adjudged by the court that judgment by default be, and is hereby, entered against the said defendant, and that the plaintiffs have and recover from the said defendant the damages by them sustained by reason of the non-payment of the demand sued on, and that a jury be impanneled at some future day of the term to inquire thereof.

*Final Judgment.*

From Minutes, Nov. 17th, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

On this 17th day of November, 1885, this cause again came on to be heard, and the plaintiffs appeared, by attorney, and announced themselves ready to execute the writ of inquiry heretofore awarded; and thereupon came a jury of twelve good and lawful men, to wit, Bonner N. McCraven and eleven others, who, being duly elected, tried, impanneled, and sworn, and having heard the evidence and charge of the court, returned the following verdict: "We, the jury, find for plaintiffs debt and interest to date, nine thousand and thirty-one $\frac{33}{100}$ dollars ($9,031.33), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

224 It was thereupon ordered, adjudged, and decreed by the court, in accordance with the verdict, that the plaintiffs, George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., do have and recover of and from the defendant, W. T. Tuffly, the sum of nine thousand and thirty-one & $\frac{33}{100}$ dollars ($9,031.33), with interest thereon at the rate of eight per cent. per annum from date thereof, and all costs in this behalf incurred, for all which let execution issue.

And it further appearing to the court that by virtue of writ of attachment in this cause certain goods, wares, and merchandise and other personal property of the defendant situated in the store on

the corner of Main and Prairie streets, in the city of Houston, Texas, were, on the 31st day of March, 1885, seized and levied on by the marshal of the eastern district of Texas, as fully shown by his return on said writ on file herein, and that plaintiffs by virtue of said levy acquired a lien upon said property, and that thereafter, to wit, on the 27th day of April, 1885, under order of sale, duly issued out of this court and directed to the marshal, he sold the said property and paid the proceeds thereof, amounting to eleven thousand six hundred dollars, together with the sum of forty-three & $\frac{70}{100}$ dollars, found on hand at the time of levying said writ, into the registry of this court, and that the plaintiffs have a valid lien upon said fund now in the court, it was further ordered, adjudged, and decreed that plaintiffs' said lien be foreclosed, and that said proceeds of sale be applied to the satisfaction of this judgment and all costs of court, and that the same be paid to the attorney of record for plaintiffs herein, whose receipt shall be sufficient voucher to the clerk therefor.

225 From Minutes, November Term, Nov. 18th, 1885.

MORRISON, HERRIMAN & Co.
*vs.*
W. T. TUFFLY. } 1327.

Upon application of J. G. Tracy, late United States marshal for the eastern district of Texas, and upon proof being made to the satisfaction of the court, it is ordered that his account of expenses incurred and paid by him as marshal in this suit, aggregating the sum of six hundred and eight $\frac{58}{100}$ dollars ($608.58), be, and the same is hereby, approved, and the said amount taxed as costs in the case.

*Original Petition in Case No.* 1328, *Dunham, Buckley & Co., vs. W. T. Tuffly, with Affidavit and Verdict of Jury. Filed March* 31, 1885.

In the Circuit Court of the United States for the Eastern District of Texas, in the Fifth Circuit, Holding Sessions at Galveston, Texas.

To the honorable the judges of said court:

Your petitioners, James H. Dunham, William Buckley, and Charles H. Webb, who, in the matters hereinafter set forth, were and still are copartners under the firm name and style of Dunham, Buckley and Company, at New York, in the State of New York, and hereinafter styled plaintiffs, complaining of W. T. Tuffly, merchant, at Houston, Texas, respectfully represent that plaintiffs reside at New York, in the county and State of New York, and that they are all citizens of the State of New York; that the defendant resides at Houston, in the county of Harris and State of Texas, and that he is a citizen of the State of Texas; that heretofore, to
226 wit, on the 14th day of February, 1885, plaintiffs, at the special instance and request of defendant, sold and delivered

to the defendant certain goods, wares, and merchandise; in consideration whereof defendant then undertook, promised, and agreed to pay plaintiffs, at the times hereinafter set forth, so much money as the said goods, wares, and merchandise were reasonably worth, and that the same were at the time of the sale and delivery thereof reasonably worth the sums charged therefor, amounting in the aggregate to one thousand and seven & $\frac{93}{100}$ dollars ($1,007.93); that defendant undertook, promised, and agreed to pay plaintiffs said sum of money for the reasonable value of said goods, at the following times, to wit: On May 1st, 1885, the sum of one hundred and sixty-six $\frac{68}{100}$ dollars ($166.68), and on July 1st, 1885, the remainder thereof, amounting to the sum of eight hundred and forty-one & $\frac{25}{100}$ dollars ($841.25), and that said sums of money will be due to plaintiffs from defendant on said last-named dates, respectively; that defendant is justly indebted to plaintiffs in said sums of money, which will be due on said last-named dates, respectively, and amounting in the aggregate to $1,007.93, and that he has disposed of his property, in whole or in part, with intent to defraud his creditors. Wherefore plaintiffs pray for process of attachment. Plaintiffs further say that the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

Wherefore plaintiffs sue and pray for citation, attachment, and all other proper process, and, upon hearing hereof and after their said debt shall have all become due, for judgment against defendant
227 therefor, and for costs of suit, and for general relief.

And, as in duty bound, petitioners will ever pray.

J. ANSON JONES,
*Attorney for Plaintiffs.*

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, the undersigned, John Kennedy, a notary public in and for the county of Harris, in the State of Texas, on this day personally appeared H. W. Chapman, to me known, who, being by me duly sworn, on oath says that he is the agent of the plaintiffs in the foregoing petition, composing the firm of Dunham, Buckley & Co., and authorized to make this affidavit in their behalf. He further says that the statements contained in the above and foregoing petition are true; that the defendant, W. T. Tuffly, is justly indebted to the plaintiffs, Dunham, Buckley & Company, in the sum of one thousand and seven & $\frac{93}{100}$ dollars ($1,007.93), and that the same will be due and payable as follows, to wit: One hundred and sixty-six & $\frac{68}{100}$ dollars ($166.68) on May 1st, 1885, and eight hundred and forty-one & $\frac{25}{100}$ dollars ($841.25) on July 1st, 1885; that said W. T. Tuffly has disposed of his property, in whole or in part, with intent to defraud his creditors; that the attachment now applied for is not sued out for the purpose of injuring or harassing the defendant, and that plaintiffs will probably lose their debt unless such attachment is issued.

H. W. CHAPMAN.

Subscribed and sworn to before me this the 28 day of March, A. D. 1885, to certify which I hereto set my hand and official seal.

JOHN KENNEDY,

[SEAL.] *Notary Public in and for Harris County, Texas.*

228 Endorsements: "No. 1328, C. L. Dunham, Buckley & Co. *vs.* W. T. Tuffly. Original petition and affidavit for attachment. Filed March 31, 1885. C. Dart, clerk."

Verdict of jury endorsed on petition:

"We, the jury, find for plaintiffs' debt, one thousand seven $\frac{98}{100}$ dollars ($1,007.93), and that the property seized under the writ of attachment and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

*Attachment Bond. Filed March* 31, 1885.

In the Circuit Court of the U. S., Eastern Dist. of Texas, at Galveston.

DUNHAM, BUCKLEY & Co.
*vs.*
W. T. TUFFLY.

THE STATE OF TEXAS, *County of Harris:*

We, the undersigned, Dunham, Buckley & Co., as principals, and W. L. Foley and John Kennedy, as sureties, acknowledge ourselves bound to pay to W. T. Tuffly the sum of two thousand and twenty-five dollars, conditioned that the above-bound Dunham, Buckley & Co., plaintiffs in attachment against the said W. T. Tuffly, defendant, will prosecute their said suit to effect, and that they will pay all such damages and costs as shall be adjudged against them for wrongfully suing out such attachment.

Witness our hands this 28th day of March, 1885.

DUNHAM, BUCKLEY & CO.,
By H. W. CHAPMAN, *Agent.*
W. L. FOLEY.
JOHN KENNEDY.

229 Approved.
C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

Endorsements: "No. 1328, C. L. Dunham, Buckley & Co. *vs.* W. T. Tuffly. Attachment bond. Filed March 31, 1885. C. Dart, clerk."

*Citation. Issued April* 3, 1885.

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon W. T. Tuffly, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof, to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the second day of November next, to answer the petition of Jas. H. Dunham, Wm. Buckley, & Chas. H. Webb, composing the firm of Dunham, Buckley & Co., filed M'ch 31, '85 (cause No. 1328), against him, the said W. T. Tuffly, in an action of debt on open account in the sum of $1,007.93, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the [SEAL.] circuit court thereof, at Galveston, this 3d day of April, in the year of our Lord eighteen hundred and eighty-five, and of American Independence the one hundred and ninth year.

230

C. DART,
*Clerk Eastern District Texas, at Galveston,*
By W. L. HANSCOM, *Deputy.*

*Marshal's Return.*

Received this writ on the 3d day of April, 1885, and I executed the same on the 4th day of April, 1885, by delivering to the within-named defendant, in Houston, in person a true copy of this writ and a copy of the petition, certified by the clerk of this court.

J. G. TRACY,
*U. S. Marshal.*

Endorsements: "C. L., No. 1328. Dunham, Buckley & Co. *vs.* W. T. Tuffly. Issued 3d day of April, A. D. 1885. C. Dart, clerk U. S. court, E. D. T., Galveston, by W. L. Hanscom, deputy. Returned and filed April 6, 1885. C. Dart, clerk, by Geo. C. Rives, dept."

*Default Judgment.*

From Minutes, November Term, November 6th, 1885.

DUNHAM, BUCKLEY & Co.
*vs.*
W. T. TUFFLY. } 1328.

On this day came the plaintiffs, by their attorney, and the de

fendant, having been duly served with process, came not, but wholly made default; wherefore it is considered and adjudged by the court that judgment by default be, and is hereby, entered against the said defendant, and that the plaintiffs have and recover of and from the said defendant the damages by them sustained by reason of the non-payment of the demand sued on. It is further ordered that a jury be impaneled at some future day of the term to inquire of the said damages.

231 *Final Judgment.*

From Minutes, November Term, November 17th, 1885.

DUNHAM, BUCKLEY & Co. *vs.* W. T. TUFFLY. } 1382.

On this 17th day of November, 1885, this cause again came on to be heard, and the plaintiffs appeared, by their attorney, and announced themselves ready to execute the writ of inquiry heretofore awarded; and thereupon came a jury of twelve good and lawful men, to wit, Bonner N. McCraven and eleven others, who, being duly elected, tried, impaneled, and sworn, and having heard the evidence and charge of the court, returned the following verdict:

"We, the jury, find for plaintiffs, debt, one thousand and seven $\frac{93}{100}$ dollars ($1,007.93), and that the property seized under the writ of attachment and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

It was thereupon ordered, adjudged, and decreed by the court, in accordance with the verdict, that the plaintiffs, James H. Dunham, William Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., do have and recover of and from the defendant, W. T. Tuffly, the sum of one thousand and seven $\frac{93}{100}$ dollars ($1,007.93), with interest thereon, at the rate of eight per cent. per annum, from date hereof, and all costs in this behalf incurred, for all of which let execution issue.

And it further appearing to the court that by virtue of writ of attachment in this cause certain goods, wares, and merchandise and other personal property of the defendant, situated in the store
232 on the corner of Main and Prairie streets, in the city of Houston, Texas, were, on the 31st day of March, 1885, seized and levied on by the marshal of the eastern district of Texas, as fully shown by his return on said writ on file herein, and that plaintiffs, by virtue of said levy, acquired a lien upon said property, and that thereafter, to wit, on the 27th day of April, 1885, under order of sale duly issued out of this court and directed to the marshal, he sold the said property and paid the proceeds thereof, amounting to eleven thousand six hundred dollars, together with the sum of forty-three

& $\frac{70}{100}$ dollars found on hand at the time of levying said writ, into the registry of this court, and that the plaintiffs have a valid lien upon said fund now in the court, it was further ordered, adjudged, and decreed that plaintiffs' said lien be foreclosed, and that the balance of said proceeds of sale, after satisfying the judgment and costs in case No. 1327 on the law docket of this court, entitled Morrison, Herriman & Co. *vs.* W. T. Tuffly, the levy in this case being made subject to the levy in said case No. 1327, or so much of the balance of said proceeds as may be sufficient to pay the same, be applied to the satisfaction of this judgment and all costs of court, and that the same be paid to the attorney of record for plaintiffs, whose receipt shall be a sufficient voucher to the clerk for such payment.

DUNHAM, BUCKLEY & Co.
*vs.*
W. T. TUFFLY. } 1328.

Upon application of J. G. Tracy, late United States marshal for the eastern district of Texas, and upon proof being made to the satisfaction of the court, it is ordered that an allowance of thirty-eight dollars be made to him for the services specified in the application, and the said amount is hereby taxed as costs in the case.

233 *Original Petition and Affidavit for Attachment in case No.* 1329, *W. H. Lyon & Co. v. W. T. Tuffly. Filed March* 31*st*, 1885.

In the Circuit Court of the United States for the Eastern District of Texas, in the Fifth Circuit, Holding Sessions at Galveston, Texas.

To the honorable the judges of said court:

Your petitioners, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, who, in the matters hereinafter set forth, were and still are copartners under the firm name and style of William H. Lyon and Company at New York, in the State of New York, and hereinafter styled plaintiffs, complaining of W. T. Tuffly, merchant at Houston, in the county of Harris and State of Texas—

Respectfully represent that plaintiffs reside at the city of New York, in the county and State of New York, and are all citizens of the State of New York; that the defendant resides in the county of Harris, in the State of Texas, and is a citizen of the State of Texas; that heretofore, to wit, on the twentieth day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, five months after date thereof, the sum of five hundred and seventy-six dollars and thirty-six cents ($576.36), a copy of which note is hereto annexed, marked Exhibit B, and is made a part of this petition, which note became due and payable on the twenty-third day of March, A. D. 1885; yet to pay the same or any part thereof, though long since due and unpaid,
234 and though payment thereof has been demanded, defendant has hitherto failed and refused and still fails and refuses, to

plaintiffs' damage five hundred and seventy-six dollars and thirty-six cents ($576.36).

That heretofore, to wit, on the tenth day of October, A. D. 1884, defendant, for a valuable consideration, made, executed, and delivered to plaintiffs his, defendant's, certain promissory note, in writing, of that date, wherein and whereby defendant undertook and promised to pay to plaintiffs or their order, six months after date thereof, the sum of five hundred and seventy-six dollars and thirty-seven cents, a copy of which note is annexed hereto and marked "Exhibit A" and is made a part of this petitition; which said note will be due and payable on the thirteenth day of April, A. D. 1885.

That heretofore, to wit, on the fifth day of November, A. D. 1884, and on divers day subsequent thereto, at the several times specified in the invoices hereto annexed, marked Exhibits "C," "D," and "E," and made a part of this petition, plaintiffs, at the special interest and request of defendant, sold and delivered to defendant certain goods, wares, and merchandise, in consideration whereof defendant then undertook, promised, and agreed to pay plaintiffs, at the times hereinafter set forth, so much money as the said goods, wares, and merchandise were reasonably worth, and that the same were, at the time of the sale and delivery thereof, reasonably worth the sums charged therefor, amounting in the aggregate to one hundred and twenty-six dollars and eighty-five cents ($126.85); that defendant undertook, promised, and agreed to pay to plaintiffs said sum of money for the reasonable value of said goods at the following times, to wit, on the fifth day of May, A. D. 1885, the sum of forty dollars ($40.00); on the twelfth day of May, A. D. 1885, the sum of
235 six dollars ($6.00), and on the second day of June, A. D. 1885, the sum of eighty dollars and eighty-five cents, and that said sums of money will be due to plaintiffs from defendant on said last-named dates, respectively.

That defendant is justly indebted to plaintiffs in said sums of money, due and to become due as hereinbefore set forth, amounting in the aggregate to twelve hundred and seventy-nine dollars and fifty-eight cents, and that he has disposed of his property, in whole or in part, with intent to defraud his creditors; wherefore plaintiffs pray for process of attachment. Plaintiffs further say that the attachment is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

Wherefore plaintiffs sue and pray for citation, attachment, and all other process, and upon hearing hereof and after their said debt shall have become due for judgment against defendant therefor, and for costs of suit and for general relief.

And, as in duty bound, petitioners will ever pray.

C. ANSON JONES,
*Attorney for Plaintiffs.*

EXHIBIT "A."

$576.37. HOUSTON, TEX., *Oct.* 10*th*, 1884.

Six months after date I promise to pay to the order of Wm. H. Lyon & Co. five hundred seventy-six and $\frac{37}{100}$ dollars at the City Bank of Houston, value received.

W. T. TUFFLY.

Due Ap'l 13, '85.
(Copy.)

236 EXHIBIT "B."

$576.36. HOUSTON, TEX., *Oct.* 20*th*, 1884.

Five months after date I promise to pay to the order of Wm. H. Lyon & Co. five hundred seventy-six and $\frac{36}{100}$ dollars at the City Bank of Houston, value received.

W. T. TUFFLY.

Due March 23, '85.
(Copy.)

EXHIBIT "C."

NEW YORK, *Nov.* 5*th*, 1884.

W. T. Tuffly, Houston, Texas, bought of Wm. H. Lyon & Co., importers & jobbers of fancy goods, notions, ribbons, hosiery, gloves, white goods, cashmeres, flannels, silks, &c., Nos. 483 & 485 Broadway.

Terms, 6 mos.
(Duplicate.)

1 dz. 116 graded jerseys, 40 ---------- 40 00

EXHIBIT "D."

NEW YORK, *Nov.* 12*th*, 1884.

W. T. Tuffly, Houston, Tex., bought of Wm. H. Lyon & Co., importers & jobbers of fancy goods, notions, ribbons, hosiery, gloves, white goods, cashmeres, flannels, silks, &c., Nos. 483 & 485 Broadway.

Terms, 6 mos.
(Duplicate.)

1 gross 1080 6½ p'rl & steel buttons, 6.00 ---------- 6 00

237 EXHIBIT "E"

NEW YORK, *Dec. 2nd*, 1885.

W. T. Tuffly, Houston, Tex., bought of W. H. Lyon & Co., importers & jobbers of fancy goods, notions, ribbons, hosiery, gloves, white goods, cashmeres, flannels, silks, &c., Nos. 483 and 485 Broadway.

Terms, 6 mos.
(Duplicate.)

| | | |
|---|---|---|
| 1 dz. belts | | 3 50 |
| 1 " 956 belts | | 3 00 |
| 4 pcs. 5 champion sat. ribbbon, 1.15 | | 4 60 |
| 14 " 7 " " " 1.35 | | 18 90 |
| 17 " 9 " " " 1.60 | | 27 20 |
| 11 " 12 " " " 2.15 | | 23 65 |
| | | 80 85 |

THE STATE OF TEXAS, }
*County of Harris.* }

Before me, the undersigned, John Kennedy, a notary public in and for the county of Harris, in the State of Texas, on this day personally appeared Vernon Leman, to me known, who, being by me duly sworn, on oath says that he is the agent of the plaintiffs in the foregoing petition, composing the firm of William H. Lyon and Company, and authorized to make this affidavit in their behalf. He further says that the statements contained in the above and foregoing petition are true; that the defendant, W. T. Tuffly, is justly indebted to the plaintiffs, Wm. H. Lyon & Co., in the sum
238 of twelve hundred and seventy-nine dollars and fifty-eight cents, due and to become due as follows, to wit: $576.36 by note due on March 27th, 1885; $576.37 by note due on April 13th, 1885; $40.00 due on May 5th, 1885; $6.00 on May 12th, 1885, and $80.85 due on June 2d, 1885; that said W. T. Tuffly has disposed of his property, in whole or in part, with intent to defraud his creditors; that the attachment now applied for is not sued out for the purpose of injuring or harassing the defendant, and that the plaintiffs will probably lose their debt unless such attachment is issued.

VERNON LEMAN.

Subscribed and sworn to before me this the 31 day of March, A. D. 1885, to certify which I hereunto set my hand and official seal.

[SEAL.] JOHN KENNEDY,
*Notary Public in and for Harris County, Texas.*

Endorsements: "No. 1329, C. L. W. H. Lyon & Co. *vs.* W. T. Tuffly. Original petition and affidavit for attachment. Filed March 31st, 1885. C. Dart, clerk."

*Verdict of Jury Written on Petition.*

"We, the jury, find for plaintiffs, debt and interest to date, thirteen hundred and forty-seven $\frac{17}{100}$ dollars ($1,347.17), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

BONNER N. McCRAVEN, *Foreman.*"

239 *Attachment Bond in Case* 1329. *Filed March* 31, '85.

In the Circuit Court of the United States, Eastern District of Texas, at Galveston.

WM. H. LYON & CO.
*vs.*
W. T. TUFFLY.

THE STATE OF TEXAS,
*County of Harris.*

We, the undersigned, Wm. H. Lyon & Co., as principals, and W. L. Foley and Thos. R. Franklin, as sureties, acknowledge ourselves bound to pay to W. T. Tuffly the sum of twenty-six hundred dollars ($2,600.00), conditioned that the above-bound Wm. H. Lyon & Co., plaintiffs in attachment against the said W. T. Tuffly, defendant, will prosecute their said suit to effect, and that they will pay all such damages and costs as shall be adjudged against them for wrongfully suing out such attachment.

Witness our hands this 31st day of March, 1885.

WM. H. LYON & CO.,
By VERNON LEMAN, *Agent.*
W. L. FOLEY.
THOS. R. FRANKLIN.

Approved.
C. DART,
*Clerk U. S. Circ't Court, E. D. T., G.*

Endorsements: "C. L., 1329. Wm. H. Lyon & Co. to W. T. Tuffly. Attachment bond. Filed March 31, '85. C. Dart, clerk."

240 *Citation for W. T. Tuffly in Case No.* 1329, *Wm. H. Lyon & Co. vs. W. T. Tuffly. Issued April* 3, 1885.

United States Circuit Court.

The President of the United States of America to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon W. T. Tuffly, if to be found in your district, to be and appear before the honorable circuit

court of the United States, at the next term thereof, to be holden for the fifth judicial circuit, at the court-house thereof, in the city of Galveston, on Monday, the second day of November next, to answer the petition of Wm. H. Lyon, Jas. O. Carpenter, & Joseph H. T. Martin, composing firm of Wm. H. Lyon & Co., filed M'ch 31, '85 (cause No. 1329), against him, the said W. T. Tuffly, in an action of debt on promissory notes and open account, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 3rd day of April, in the year of our Lord eighteen hundred and eighty-five, and of American Independence the one hundred and ninth year.

[SEAL.]

C. DART,
*Clerk Eastern District Texas, at Galveston,*
By W. L. HANSCOM, *Deputy.*

241 *Marshal's Return on Citation.*

Received this writ on the 3rd day of April, 1885, and I executed the same on the 4th day of April, 1885, by delivering to the within-named defendant, in Houston, in person a true copy of this writ and a copy of the petition certified by the clerk of this court.

J. G. TRACY.

Endorsements on citation: "C. L., No. 1329. Wm. H. Lyon *vs.* W. T. Tuffly. Issued 3d day of April, A. D. 1885. C. Dart, clerk U. S. court, E. D. T., Galveston, by W. L. Hanscom, deputy. Returned & filed April 6th, 1885. C. Dart, clerk, by Geo. C. Rives, dept."

*Default Judgment.*

From Minutes, Nov. 6th, 1885.

WM. H. LYON & CO.
*vs.*
W. T. TUFFLY. } 1329.

On this day came the plaintiffs, by their attorney, and defendant, having been duly served with process, came not, but wholly made default; wherefore it is considered and adjudged by the court that judgment by default be, and is hereby, entered against the said defendant, and that plaintiffs have and recover from the said defendant the damages by them sustained by reason of the non-payment of the demand sued on. It is further ordered that a jury be impaneled at some future day of the term to inquire of the said damages.

242 *Final Judgment.*

From Minutes, Nov. 17th, 1885.

W. H. LYON & Co.
*vs.*
W. T. TUFFLY. } 1329.

On this 17th day of November, 1885, this cause again came on to be heard, and the plaintiffs appeared, by attorney, and announced themselves ready to execute the writ of inquiry heretofore awarded; and thereupon came a jury of twelve good and lawful men, to wit, Bonner N. McCraven and eleven others, who, being duly elected, tried, impaneled, and sworn, and having heard the evidence and charge of the court, returned the following verdict:

*Verdict.*

"We, the jury, find for plaintiffs, debt and interest to date thirteen hundred and forty-seven $\frac{17}{100}$ dollars ($1,347.17), and that the property seized under the writ of attachment in the case was liable to said attachment, and that the proceeds of sale of the attached property now in the registry of the court are subject to the judgment of this court.

"BONNER N. McCRAVEN, *Foreman.*"

It was thereupon ordered, adjudged, and decreed by the court, in accordance with the verdict, that the plaintiffs, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon and Company, do have and recover of and from the defendant, W. T. Tuffly, the sum of thirteen hundred and forty-seven dollars and seventeen cents ($1,347.17), with interest thereon, at the rate of eight per cent. per annum, from date hereof, and all costs in this behalf incurred, for all which let execution issue.

And it further appearing to the court that by virtue of writ of attachment in this cause certain goods, wares, and merchandise and other personal property of the defendant, situated in the store on the corner of Main and Prairie streets, in the city of Houston,
243 Texas, were, on the 31st day of March, 1885, seized and levied on by the marshal of the eastern district of Texas, as fully shown by his return on writ on file herein, and that plaintiffs, by virtue of said levy, acquired a lien upon said property, and that thereafter, to wit, on the 27th day of April, 1885, under order of sale duly issued out of this court and directed to the marshal, he sold the said property and paid the proceeds thereof, amounting to eleven thousand six hundred dollars, together with the sum of forty-three and seventy one-hundredths dollars found on hand at the time of levying said writ, into the registry of this court, and that the plaintiffs have a valid lien upon said fund now in the court, it was further ordered, adjudged, and decreed that plaintiffs' said

lien be foreclosed, and that the balance remaining of the said proceeds of sale, after the payment of the judgments and costs in case No. 1327 on the docket of this court, entitled Morrison, Herriman & Co. *vs.* W. T. Tuffly, and No. 1328, entitled Dunham, Buckley & Co. *vs.* W. T. Tuffly, the levy in this case being made subject to the levies in said cases Nos. 1327 & 1328, be applied to the satisfaction *pro tanto* of this judgment and all costs of court herein, and that the same be paid to the attorney of record for plaintiffs herein, whose receipt shall be a sufficient voucher to the clerk for such payment.

And it further appearing to the court that by virtue of the writ of attachment issued in this cause the marshal of the eastern district of Texas did, on the 31st day of March, 1885, levy upon and seize the following real estate, to wit, a one-half interest in blocks number one hundred and twenty-six (126), one hundred and twenty-seven (127), one hundred and thirty-one (131), one hundred and thirty-two (132), 133, one hundred and thirty four (134), in
244 "Ryan's Addition" to the city of Houston; lots eleven (11), twelve (12), thirteen (13), and fourteen (14), in block two (2), in "Johnson's Addition" to the city of Houston, and block number sixty-two, (62) in "Baker's Addition" of subdivision of lot thirty-five (35), in the O. Smith survey, all in Harris county, Texas, and that by virtue of said levy plaintiffs acquired, on March 31, 1885, a lien upon the said real estate, it was further adjudged and decreed that said lien be foreclosed, and that an order of sale shall issue to the marshal, directing him to seize and sell the same as under execution in satisfaction of this judgment, and if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money or any balance thereof remaining unpaid out of any other property of the defendant, as in case of ordinary executions.

WM. H. LYON & Co.
*vs.*
W. T. TUFFLY. } 1329.

Upon application of J. G. Tracy, late United States marshal for the eastern district of Texas, and upon proof being made to the satisfaction of the court, it is ordered that an allowance of thirty-eight dollars be made to him for the services specified in the application, and the said amount is hereby taxed as costs in the case.

245 The above and foregoing being the substance of all the testimony admitted to the jury, the court thereupon instructed the jury as follows:

In U. S. Circuit Court, at Galveston, Texas.

LOUIS TUFFLY, Assignee, &c.,
*vs.*
JAMES G. TRACY *et al.* } No. 1352, C. L.

GENTLEMEN OF THE JURY: If you shall find from the evidence that the limited partnership, as stated and claimed by plaintiff, was

recognized as such in its inception by the three attaching creditors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor, and its property attached as such after its assignment, and that its other creditors also so treated and dealt with it and accepted its assignment to pl'ff as such, and that Mrs. McLin, named therein as the special or limited partner, and W. T. Tuffly, named therein as the general partner, and whose name constituted the firm name, always treated it as a special or limited partnership, and that Mrs. McLin loaned it money, as claimed, and subsequently sued the plaintiff, as its assignee, therefor, then, and in such case you likewise may deem the same a limited partnership and regard the assignment to plaintiff as valid. If you shall also find that the same was made at a time when the "W. T. Tuffly" paper was maturing faster than it could be met in the ordinary and usual course of its business, and that such assignment was made in good faith in contemplation of insolvency; and if you shall further find that the defendant Tracy, as U. marshal, seized the property so assigned under and by virtue of the attachments of the three attachment creditors who have made themselves defendants herein, then you will find for the
246 plaintiff herein as against def't Tracy and the sureties on his official bond and the three firms of attaching creditors for the value of the goods as they were at the time and place of their seizure under such writs of attachment, such value to be ascertained from all the facts detailed in evidence before you; but if you shall otherwise find as to the facts constituting the rights of the parties, as hereinbefore set forth, then and in such case your verdict will be for the defendants.

And also as follows, at request of defendants:

In Circuit Court of U. S., at Galveston, Texas.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY *et al.*

Defendants in the above cause, by their counsel, request the court to charge the jury:

If the proof shows you that Mrs. McLin never, in fact, contributed the amount to the common stock necessary to make her a special partner, or that she afterwards altered and diminished the amount of her capital stock, and that these facts or either of them were unknown to the attaching creditors who are defendants herein at the time they dealt with the firm and sued W. T. Tuffly, then you are instructed that neither the recognition and dealing by them with Tuffly and Mrs. McLin as a limited partnership nor the suing of W. T. Tuffly in ignorance of said facts estops or precludes them or any of the defendants from showing that said partnership was never, in fact, legally formed as a limited partnership, for the reason above stated, nor from showing that it afterward, by reason of the

alteration and diminution of Mrs. McLin's capital stock, was rendered a general partnership.

C. ANSON JONES,
*Att'y for Defendants.*

247 To so much of the said charge of the court as is as follows:

"In U. S. Circuit Court, at Galveston, Texas.

LOUIS TUFFLY, Assignee, &c.,
*v.*
JAMES G. TRACY *et al.*
} No. 1352, C. L.

GENTLEMEN OF THE JURY: If you shall find from the evidence that the limited partnership, as stated and claimed by plaintiff, was recognized as such in its inception by the three attaching creditors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor, and its property attached as such after its assignment, and that its other creditors also so treated & dealt with it and accepted its assignment to plaintiff as such, & that Mrs. McLin, named therein as the special or limited partner, and W. T. Tuffly, named therein as the general partner, & whose name constituted the firm name, always treated it as a special or limited partnership, & that Mrs. McLin loaned it money, as claimed, & subsequently sued the plaintiff, as its assignee, therefor, then and in such case you likewise may deem the same a limited partnership and regard the assignment to plaintiff as valid"——

248 —and to each and every portion of the same the defendants, by their counsel, then and there, before the jury retired from the bar, excepted, and then *and then* and there prayed a bill of exceptions, which is granted, signed, sealed, and made a part of the record; and the court gave no other charge to the jury, except in regard to the right of defendant Tracy to recover over on his indemnity bonds in case the verdict should be against him, with instructions as to form of verdict.

The above and foregoing being the substance of all the testimony admitted to the jury, thereupon the defendants, by their counsel, before the jury had retired from the bar, requested the court to charge the jury as follows as a separate and distinct charge from all others, to wit:

"If the proof shows that after the formation of the alleged special partnership between Christine E. McLin and W. T. Tuffly the said Christine E. McLin altered or diminished her capital stock in the partnership by the withdrawal of cash or merchandise, or both, this at once worked a dissolution of the partnership, and the partnership carried on thereafter was in law a general partnership, and no payment, advance, or loan thereafter made by her to Tuffly or to
249 the partnership could restore its character as a special or limited partnership, and if you so find your verdict must be for defendants."

But the court refused said charge and refused to so charge the jury as prayed by the defendants, and failed and refused to give any other charge relative thereto than as hereinbefore set forth, and refused to so instruct the jury or to submit said issue to the jury; to which ruling of the court in refusing said charge and in refusing to instruct the jury as prayed or to give any other instruction to the jury except that hereinbefore set forth relative thereto the said defendants, by their counsel, then and — excepted before the jury retired from the bar, and then and there prayed a bill of exceptions to said ruling, which is granted, signed, sealed, and made a part of the record.

And the defendants, by their counsel, before the jury had retired from the bar, also requested the court to charge the jury as a separate and distinct charge from all others as follows, to wit:

It is claimed by the plaintiff, Louis Tuffly, that the copartnership or firm of W. T. Tuffly was a limited partnership, composed of W. T. Tuffly as general partner and Christine E. McLin as special partner. It is claimed by defendants that Tuffly and said Chris-
250 tine E. McLin were both general partners, and that said Christine E. McLin was a general and not a special partner, for the reason, among others alleged by them, that she did not comply with the requirements of the law governing limited partnerships.

On this question you are instructed that limited partnerships may consist of one or more persons who shall be called the general partners and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners. They — also required to make and severally sign a certificate, which, among other things, shall contain the amount of capital which each special partner shall have contributed to the common stock.

This certificate, after having been acknowledged by the parties in the same manner as conveyances of land are acknowledged, shall be filed in the office of the clerk of the county court of the county in which the principal place of business of the partnership shall be situated. At or before the time of filing this certificate the sum specified in the certificate to have been contributed by the special partner to the common stock must have been actually and in good faith
251 paid in cash; and if this is not so actually and in good faith paid in cash at or before said filing, then all persons interested in such partnership shall be liable for all the engagements thereof as general partners, and no payment into the fund thereafter by the special partner can relieve him from the consequences of failure to pay within the time above specified; so also the sum to be contributed by the special partner must have been actually and in good faith paid in cash, and cannot be contributed in property of any kind, however valuable it may be. If the proof shows you that Mrs. McLin's deceased husband, R. W. McLin, had a net interest, at or about the time of his death, in the firm of R. W. McLin & Co., and that, in consideration of the arrangement by W. T. Tuffly for full settlement of all claims against the said firm of R. W. McLin &

Co. and the obtaining of a release of the estate of R. W. McLin from liability on account of the same, — assigned and transferred to W. T. Tuffly all the goods, wares, and merchandise and other properties of said firm, and that the interest so conveyed constituted her contribution to the common stock to make her a special partner, then you are instructed that this would not be such contribution of actual cash, as the law requires or contemplates, no matter
252 what the outward form of the transaction was, and in such case Mrs. McLin would have thereupon become a general partner and liable as such, and no advance, loan, or payment thereafter made by her to W. T. Tuffly or to the firm would change her status from that of a general partner, and if you so find, then you are instructed that it was essential to the validity of the assignment that she should have joined in it and conveyed to the assignee her individual property not exempt, and that as she did not do so the assignment would be illegal and void, and that your verdict should be for the defendants.

But the court refused said charge and refused to so charge the jury as prayed by the defendants, and failed and refused to give any other charge relative thereto than as hereinbefore set forth, and refused to so instruct the jury or to submit said issue to the jury; to which ruling of the court in refusing said charge and in refusing to instruct the jury as prayed or to give any other instruction relative thereto than as hereinbefore set forth the said defendants, by their counsel, then and there excepted before the jury retired from the bar, and then and there prayed a bill of exceptions to said ruling, which is granted, signed, sealed, and made a part of the record.

253 And defendants, by their counsel, before the jury had retired from the bar, also requested the court to charge the jury as a separate and distinct charge from all others as follows, to wit:

The law requires persons who have formed a limited partnership to cause to be published in the manner and for the time required by the law a notice giving the terms of such partnership. The original copy of the notice for the above purpose, bearing date April 25, 1884, and signed by W. T. Tuffly and Christine E. McLin, which notice was intended to be published and was published in a newspaper printed in the city of Houston, Texas, is in evidence in this cause. You are instructed that said notice is not in compliance with the requirements of the law, in this, that it does not fully state the terms of the limited partnership formed by W. T. Tuffly and Christine E. McLin, but wholly omits to state some of the terms of said partnership. It was therefore ineffectual for the purpose for which it was intended, and the partnership became a general partnership by reason of the failure to give the published notice of the terms of the partnership required by law, and Mrs. Christine E. McLin became a general and not a special partner, and was such at the date of the deed of assignment, March 23, 1885, and was liable as
254 such; and as she did not join in the deed of assignment under which the plaintiff claims, nor convey to him her individual property for the benefit of creditors, the said deed of assign-

ment is therefore void and interposed no legal obstacle to the levy of the attachments complained of, and you will therefore return a verdict for the defendants.

But the court refused said charge and refused to so charge the jury as prayed by the defendants, and failed and refused to give any other charge relative thereto than as hereinbefore set forth, and refused to so instruct the jury or to submit said issue to the jury; to which ruling of the court in refusing said charge and in refusing to instruct the jury as prayed or to give any other instruction relative thereto than as hereinbefore set forth the said defendants, by their counsel, then and there excepted before the jury retired from the bar, and then and there prayed a bill of exceptions to said ruling, which is granted, signed, sealed, and made a part of the record.

Given under my hand and seal, in open court, this 7th day of May, 1886.

CHAUNCEY B. SABIN, [SEAL.]
*U. S. District Judge for the Eastern District of Texas.*

255 Endorsements: "1352. Louis Tuffly, ass'ee, *vs.* James G. Tracy *et al.* Defendants' third bill of exceptions. Filed in open court May 7th, 1886. C. Dart, clerk."

256 *Copy Writ of Error. Filed May 8th*, 1886.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at Galveston, between Louis Tuffly, assignee of the firm of W. T. Tuffly, plaintiff, and James G. Tracy, Timothy H. Scanlan, Henry H. Dooley, John T. Brady, Samuel K. McIlhenny, Thomas R. Franklin, John Herriman, and George A. Morrison, composing the firm of Morrison, Herriman & Co., and said firm; J. H. Dunham, Wm. F. Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and said firm; William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of Wm. H. Lyon & Co., and said firm; W. D. Cleveland, W. L. Foley, C. Lombardi, and John Kennedy, defendants, in which suit a final judgment was rendered in said circuit court on the 12th day of April, A. D. 1886, in favor of plaintiff and against defendants, a manifest error hath happened, to the great damage of the said James G. Tracy, Tim-
257 othy H. Scanlan, Henry H. Dooley, John T. Brady, George A. Morrison, and John Herriman, James H. Dunham, William F. Buckley, and Charles H. Webb, Wm. H. Lyons, James O. Carpenter, and Joseph H. T. Martin, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid

in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the [SEAL.] said Supreme Court, the 8th day of May, in the year of our Lord one thousand eight hundred and eighty-six.

C. DART,
*Clerk of the Circuit Court of the United States for the Eastern District of Texas, at Galveston.*

258 Allowed by—
CHAUNCEY B. SABIN,
*U. S. District Judge for the Eastern District of Texas.*

Endorsements on original writ: "C. L., 1352. Louis Tuffly, assignee, *vs.* James G. Tracy & others. Writ of error to Supreme Court. Filed May 8th, 1886. C. Dart, clerk."

I hereby certify the foregoing to be a true copy of the original writ of error issued in said cause.

Attest: C. DART, *Clerk*,
[SEAL.] By W. L. HANSCOM, *Deputy*.

The foregoing copy of writ of error endorsed as follows:

"C. L., 1352. Louis Tuffly, assignee, *v.* James G. Tracy & others. Writ of error to Supreme Court. (Copy.) This copy deposited in the clerk's office for the defendant in error May 8th, 1886. Attest: C. Dart, clerk, by W. L. Hanscom, deputy. Filed May 8th, 1886. C. Dart, clerk, by W. L. Hanscom, deputy."

259 *Refusal of Thomas R. Franklin and Other Def'ts Named to Join in Writ of Error. Filed May* 10, 1886.

In Circuit Court of the United States for the Fifth Circuit & Eastern District of Texas, Holding Sessions at Galveston, Texas.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY *et al.* } No. 1352.

To Messrs. Thomas R. Franklin, W. L. Foley, W. D. Cleveland, C. Lombardi, and S. K. McIlhenny & John Kennedy.

GENTLEMEN: We hereby give you notice that we intend to prosecute a writ of error to the Supreme Court of the United States from

the judgment and decree rendered in this cause in the circuit court of the United States for the eastern district of Texas, at Galveston, on the 12th day of April, 1886, to the end that you may join therein, if you so desire.

Houston, Texas, May 7, 1886.

Respectfully,

JAMES G. TRACY,
HENRY H. DOOLEY,
T. H. SCANLAN,
JOHN L. BRADY,
GEO. A. MORRISON,
JOHN HERRIMAN,
JAMES H. DUNHAM,
WILLIAM F. BUCKLEY,
CHARLES H. WEBB,
WILLIAM H. LYON,
JAMES O. CARPENTER,
JOSEPH H. T. MARTIN,
By C. ANSON JONES,
*Attorney of Record for said Parties Defendant.*

260 Service of the above and foregoing notice is accepted this 7th day of May, 1886, and we hereby decline to join in the application for and prosecution of said writ of error.

Witness our hands this 7th of May, 1886.

THO. R. FRANKLIN.
JOHN KENNEDY.
W. L. FOLEY.
WM. D. CLEVELAND.
C. LOMBARDI.
S. K. McILHENNY.

All signatures witnessed by—
C. ANSON JONES.

Endorsements: "C. L., 1352. Louis Tuffly, ass'ee, *vs.* James G. Tracy *et al.* Refusal of Thomas R. Franklin and other def'ts named to join in writ of error. Filed May 10, 1886. C. Dart, clerk."

*Bond for Writ of Error and Supersedeas. Filed June* 9, 1886.

Know all men by these presents that we, James G. Tracy, Henry H. Dooley, Timothy H. Scanlan, John T. Brady, George A. Morrison, and John Herriman, composing the firm of Morrison, Herriman & Co.; James H. Dunham, William F. Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon & Co., and Sylvain Blum and
261 Aaron Blum, are held and firmly bound unto Louis Tuffly, assignee of the firm of W. T. Tuffly, in the full and just sum of twenty-seven thousand (27,000) dollars, to be paid to the said Louis Tuffly, assignee of the firm of W. T. Tuffly, his certain attor-

ney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of June, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas lately, at a regular term of the circuit court of the United States in and for the fifth circuit and eastern district of Texas, holding sessions at Galveston, Texas, to wit, at the March term of said court, in the year of our Lord one thousand eight hundred and eighty-six, in a suit depending in said court between said Louis Tuffly, assignee of the firm of W. T. Tuffly and James G. Tracy, Henry H. Dooley, Timothy H. Scanlan, John T. Brady, George A. Morrison, and John Herriman, composing the firm of Morrison, Herriman & Co.; James H. Dunham, William F. Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and William H. Lyon, James O. Carpenter, and Joseph
262 H. T. Martin, composing the firm of William H. Lyon & Co.; Thomas R. Franklin, John Kennedy, W. L. Foley, William D. Cleveland, C. Lombardi, and Samuel K. McIlhenny, the same being cause No. 1352 on the docket of said court, a judgment was rendered against the said James G. Tracy and against Henry H. Dooley, Timothy H. Scanlan, & John T. Brady, sureties on his official bond as marshal of the United States for the eastern district of Texas, and against George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., and said firm; James H. Dunham, William F. Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and said firm, and William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon & Co., and said firm, for the sum of seventeen thousand (17,000) dollars, with interest thereon at the rate of eight per cent. per annum from date of judgment and for all costs of suit; and judgment was further rendered in favor of the defendant, James G. Tracy, upon the indemnity bonds given him as indemnity against damage for taking the property of the plaintiff therein as follows: Against James H. Dunham, William F. Buckley, and Charles H. Webb, composing the firm of Dunham,
263 Buckley & Co., and of said firm, and W. L. Foley and John Kennedy, their sureties, the sum of twenty-five hundred (2,500) dollars, with interest as aforesaid and all costs; against William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of William H. Lyon & Co., and of said firm, and W. L. Foley and Thomas R. Franklin, their sureties, the sum of twenty-six hundred (2,600) dollars, with interest as aforesaid and all costs; and against George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., and of said firm, and William D. Cleveland, C. Lombardi, and Samuel K. McIlhenny, their sureties, the sum of seventeen thousand (17,000) dollars, with interest thereon as aforesaid and all costs; and that said James G. Tracy have execution against said defendants and their said sureties for said several sums, interests, and costs, but the whole amount to be collected as indemnity to the said James G. Tracy for his damage

found therein should not exceed said sum of seventeen thousand (17,000) dollars, with interest thereon as aforesaid and all costs, which judgment was rendered on the 12th day of April, in the year of our Lord one thousand eight hundred and eighty-six; and the said James G. Tracy, Henry H. Dooley, Timothy H. Scanlan,
264 John T. Brady, George A. Morrison, John Herriman, James H. Dunham, William F. Buckley, Charles H. Webb, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Louis Tuffly, assignee of the firm of W. T. Tuffly, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the said James G. Tracy, Henry H. Dooley, Timothy H. Scanlan, John T. Brady, George A. Morrison, John Herriman, James H. Dunham, William F. Buckley, Charles H. Webb, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin shall prosecute their said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JAMES G. TRACY. [SEAL.]
HENRY H. DOOLEY. [SEAL.]
TIMOTHY SCANLAN. [SEAL.]
JOHN T. BRADY. [SEAL.]
GEORGE A. MORRISON. [SEAL.]
265 JOHN HERRIMAN. [SEAL.]
JAMES H. DUNHAM. [SEAL.]
WILLIAM F. BUCKLEY. [SEAL.]
CHARLES H. WEBB. [SEAL.]
WILLIAM H. LYON. [SEAL.]
JAMES O. CARPENTER. [SEAL.]
JOSEPH H. T. MARTIN. [SEAL.]
SYLVAIN BLUM. [SEAL.]
AARON BLUM. [SEAL.]

Sealed and delivered in presence of—
A. S. MAIR.
HENRY MILSOM.

Approved by me at Tyler, Texas, this 7th day of June, A. D. 1886.
CHAUNCEY B. SABIN,
*U. S. District Judge for the Eastern District of Texas.*

Endorsements: "1352. Louis Tuffly, assignee, *vs.* James G. Tracy *et al.* Bond for writ of error and supersedeas. Filed June 9, 1886. C. Dart, clerk, by Geo. C. Rives, dep'ty."

266 *Citation on Writ of Error. Issued June* 9, 1886.

The United States of America to Louis Tuffly, assignee of the firm of W. T. Tuffly, Greeting:

You are hereby cited and admonished to be and appear at a Spreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Texas, at Galveston, wherein James G. Tracy, Henry H. Dooley, Timothy H. Scanlan, John T. Brady, George A. Morrison, John Herriman, James H. Dunham, William F. Buckley, Charles H. Webb, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 9th day of June, [SEAL.] in the year of our Lord one thousand eight hundred and eighty-six.

CHAUNCEY B. SABIN,

267 *U. S. District Judge for the Eastern District of Texas.*

Test with the seal of court, at Galveston, Texas, this 9th day of June, A. D. 1886.

C. DART, *Clerk*,
By W. L. HANSCOM, *Deputy*.

*Marshal's Return.*

On this 29th day of June, in the year of our Lord one thousand eight hundred and eighty-six, personally appeared H. H. Kirkpatrick, deputy U. S. marshal, E. D. T., before me, the subscriber, C. Dart, clerk U. S. circuit court, eastern district of Texas, at Galveston, and makes oath that he delivered a true copy of the within citation to W. P. Hamblen, att'y for the within-named Louis Tuffly, ass'ee W. T. Tuffly, at Houston, Texas, June 24, 1886, and another copy to W. C. Oliver, att'y for said Tuffly, ass'ee, at Galveston, June 28, 1886.

H. H. KIRKPATRICK,
*Deputy U. S. Marshal, E. D. Texas.*

Sworn to and subscribed the 29th day of June, A. D. 1886.
[SEAL.]
C. DART,
*Clerk U. S. Circuit Court, E. D. T., G.*,
By W. L. HANSCOM, *Deputy*.

The foregoing citation endorsed as follows: "C. L., 1352. Louis Tuffly, assignee, *v.* James G. Tracy & others. Citation on writ
268 of error. Returned and filed June 29, 1886. C. Dart, clerk, by W. L. Hanscom, deputy."

269 *Assignments of Error. Filed June* 29, 1886.

LOUIS TUFFLY, Assignee,
*vs.*
JAMES G. TRACY *et al.* } No. 1352.

Now come James G. Tracy, Henry H. Dooley, Timothy H. Scanlan, John T. Brady, George A. Morrison, John Herriman, James H. Dunham, William F. Buckley, Charles H. Webb, William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, defendants in the above entitled and numbered cause, and assign the following errors:

I. The court erred in overruling the general demurrer filed by defendants herein.

II. The court erred in overruling the first special demurrer or exception filed by defendants herein, on the ground that the petition showed that the alleged firm of W. T. Tuffly was composed of two copartners, and that only one of the copartners joined in the alleged deed of assignment under which the plaintiff claimed, and showed no reason why the other copartner did not join therein.

270 III. The court erred in overruling the second special demurrer or exception filed by defendants herein, on the ground that the alleged deed of assignment set forth in the petition was illegal and void (1) because signed by only one of the copartners; (2) because the same purported to be made for the benefit of such of W. T. Tuffly's creditors only as would consent to accept their proportional share of the property conveyed and discharge him from their respective claims, and did not include within its provisions and benefits the creditors of himself as copartner of the alleged firm of W. T. Tuffly; and (3) because it did not purport or attempt to convey the entire partnership property of the firm, but only the individual property of said Tuffly and his property as a copartner of the alleged firm of W. T. Tuffly.

IV. The court erred in overruling the third special demurrer or exception filed by the defendants herein, on the ground that the alleged deed of assignment was illegal and void because it showed on its face that it was for the benefit only of such creditors as would accept their proportional share of the property conveyed, whereas it only attempted and purported to convey the property of said Tuffly which he owned as copartner or individually, and did not convey the property of the firm of W. T. Tuffly.

271 V. The court erred in overruling the fourth special demurrer or exception filed by defen-ants herein, on the ground that the alleged deed of assignment by its terms unlawfully delayed and hindered the creditors of the assignor by providing that the assignee was to apply the proceeds of the property conveyed, ratably

or otherwise, to the payment of the debts only when he should have sold, collected, and converted the entire property conveyed to him.

VI. The court erred in overruling the fifth special demurrer or exception filed by defendants herein, on the ground that the alleged deed of assignment was illegal and void, because by its terms it admitted the individual creditors of W. T. Tuffly to an equal participation with partnership creditors in the proceeds of the partnership property, and thereby gave them an unlawful preference over the creditors of the partnership.

VII. The court erred in overruling defendants' objections to the introduction in evidence of the deed of assignment from W. T. Tuffly to Louis Tuffly, which objections were—

1. Because it showed on its face that Mrs. C. E. McLin was a partner in the firm of W. T. Tuffly.

2. That she was scheduled as a creditor of said firm; and

272 3. Because the said assignment thereby allows her to participate in the benefits of the assignment, and thereby reserves a benefit to one of the partners and gives her an unlawful preference over the creditors of the partnership.

And in allowing said deed of assignment to be read in evidence over defendants' said objections thereto, as shown by defendants' third bill of exceptions.

VIII. The court erred in overruling defendants' objections to the introduction in evidence of the notice of the formation of special partnership between W. T. Tuffly and Christine E. McLin, which objections were on the ground that it was not in compliance with law, in this, that it does not state the terms of the partnership fully; it fails to state the general nature of the business intended to be transacted by the alleged partnership, the period at which the partnership is to commence, how long it is to be continued or when it is to terminate, and also omits to state where the business is to be transacted; and the court erred in allowing said notice to be read in evidence over defendants' said objections thereto, as shown by defendants' third bill of exceptions.

IX. The court erred in overruling defendants' objections to the introduction in evidence of the agreement of the creditors of

273 the firm of R. W. McLin & Co., dated April 24, 1884, and attached to plaintiff's amended petition and replication, filed Nov. 17, 1885; which objections were—

1. That it was irrelevant and immaterial for the purpose for which it was offered, viz., to show notice to defendants, Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., of the formation and existence of a special partnership between W. T. Tuffly and Christine E. McLin, and to sustain plaintiff's plea that defendants were estopped to deny the formation and existence of said special partnership or to show that it was not legally formed or carried on; and

2. That it was not the way to prove notice of the formation of a special partnership and to prove estoppel against the defendants.

And the court erred in allowing said agreement to be read in evi-

dence over said objections thereto, as shown by second bill of exceptions.

X. The court erred in charging the jury that if the limited partnership alleged by plaintiff was recognized as such in its inception by the three attaching creditors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor and its property attached as such after the assignment, and that its other creditors so treated and dealt
274 with it and accepted the assignment to plaintiff as such, and that Mrs. McLin, named therein as the special or limited partner, and W. T. Tuffly, named therein as the general partner, always treated it as a special or limited partnership, and that Mrs. McLin loaned it money, as claimed, and subsequently sued the plaintiff, as its assignee, therefor, then and in such case they might likewise deem the same a limited partnership and regard the assignment to plaintiff as valid.

XI. The court erred in refusing to charge the jury, at the request of defendants, that if they found for plaintiff they should return a verdict for the amount only of the claims of creditors who had consented to the assignment (excepting Mrs. McLin's claim) according to the proof, with interest thereon, at the rate of eight per cent. per annum, from January 1, 1886.

XII. The court erred in refusing to charge the jury, at the request of the defendants, as follows:

"The instrument offered in evidence by plaintiff, bearing date the 24th day of April, 1884, and signed by Morrison, Herriman & Co., Dunham, Buckley & Co., William H. Lyon & Co., and other
275 creditors of the firm of R. W. McLin & Co., through their agent, Andrew Wilson, is only a release of the estate of R. W. McLin, deceased, from all liability on account of their respective claims.

"The recitations in it that said claims had been assumed by the firm of W. T. Tuffly, composed of W. T. Tuffly as general and Christine E. McLin as special partner, as appeared by their partnership certificate by them signed, does not preclude or estop the defendants in this case from showing that such limited partnership was never in fact formed, or that by reason of violation of the law it was afterward converted into a general partnership."

XIII. The court erred in refusing to charge the jury, at the request of the defendants, as follows:

"No statements, representations, or suggestions made by Wilson to W. T. Tuffly and Mrs. McLin relative to the formation of a limited partnership, as testified to by them, can make it a limited partnership if it is not or was not such in fact and law, nor can they operate to prevent the defendants in this cause from showing that the requirements of the law were not complied with in forming the limited partnership, or from showing that the provisions of the law were afterward violated by them so as to make it a limited partnership, and you will therefore disregard such testimony."

276 XIV. The court erred in refusing to charge the jury, at the request of the defendants, as follows:

"If you find that before the time of the contribution by Mrs. Christine E. McLin to the common stock of the copartnership of W. T. Tuffly she had withdrawn a sum of cash from the surviving partner of R. W. McLin which was to her debit at the time of such contribution and had not been repaid by her, then she cannot be said to have contributed the full amount specified in the certificate as the amount to be paid by her into the common stock; and if you so find, then your verdict will be for the defendants."

XV. The court erred in refusing to charge the jury, at the request of the defendants, as follows:

"If by reason of the failure to comply with the law in the first instance or by reason of violation of law after the partnership was formed the alleged limited partnership became a general partnership, then it so continued under the law and the facts of this case; and if you find, under this and other instructions, that it was a general partnership at the date of the alleged assignment, March 23, 1885, then you are charged that said alleged assignment was illegal and void because of the failure of Mrs. Lin to join in it or to convey her individual property to the assignee, and in that event
277 your verdict should be for the defendants."

XVI. The court erred in refusing to charge the jury, at the request of the defendants, as follows:

"If the proof shows that after the formation of the alleged special partnership between Christine E. McLin and W. T. Tuffly the said *said* Christine E. McLin altered or diminished her capital stock in the partnership by the withdrawal of cash or merchandise, or both, this at once worked a dissolution of the partnership, and the partnership carried on thereafter was in law a general partnership, and no payment, advance, or loan thereafter made by her to Tuffly or to the partnership could restore its character as a special or limited partnership, and if you so find your verdict must be for defendants."

XVII. The court erred in refusing to charge the jury, at the request of the defendants, as follows:

"It is claimed by the plaintiff, Louis Tuffly, that the copartnership or firm of W. T. Tuffly was a limited partnership, composed of W. T. Tuffly as general partner and Christine E. McLin as special partner.

"It is claimed by defendants that Tuffly and said Christine E. McLin were both general partners, and that said Christine E. McLin was a general and not a special partner, for the reason, among
278 others alleged by them, that she did not comply with the requirements of the law governing limited partnerships. On this question you are instructed that limited partnerships may consist of one or more persons, who shall be called the general partners, and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners. They are also required to make and severally sign a certificate which, among other things, shall contain the amount of capital which each special partner shall have contributed to the common stock. This certificate, after having been acknowledged by the parties in the same manner as conveyances of land are

acknowledged, shall be filed in the office of the clerk of the county court of the county in which the principal place of business of the partnership shall be situated. At or before the time of filing this certificate the sum specified in the certificate to have been contributed by the special partner to the common stock must have been actually and in good faith paid in cash; and if this is not so actually and in good faith paid in cash at or before said filing, then all persons interested in such partnership shall be liable for all the engage-
279 ments thereof as general partners, and no payment into the fund thereafter by the special partner can relieve him from the consequences of failure to pay within the time above specified; so also the sum to be contributed by the special partner must have been actually and in good faith paid in cash and cannot be contributed in property of any kind, however valuable it may be. If the proof shows you that Mrs. McLin's deceased husband, R. W. McLin, had a net interest, at or about the time of his death, in the firm of R. W. McLin & Co., and that in consideration of the arrangement by W. T. Tuffly for full settlement of all claims against the said firm of R. W. McLin & Co. and the obtaining of a release of the estate of R. W. McLin from liability on account of the same assigned and transferred to W. T. Tuffly all the goods, wares, and merchandise and others properties of said firm, and that the interest so conveyed constituted her contribution to the common stock to make her a special partner, then you are instructed that this would not be such contribution of actual cash as the law requires or contemplates, no matter what the outward form of the transaction was; and in such case Mrs. McLin would have thereupon become a general partner and liable as such, and no advance, loan, or payment thereafter made by her to W. T. Tuffly or to the firm would change her
280 status from that of a general partner; and if you so find, then you are instructed that it was essential to the validity of the assignment that she should have joined in it and conveyed to the assignee her individual property not exempt, and that as she did not do so, the assignment would be illegal and void, and that your verdict should be for the defendants."

XVIII. The court erred in refusing to charge the jury, at the request of the defendants, as follows:

"The law requires persons who have formed a limited partnership to cause to be published, in the manner and for the time required by the law, a notice, giving the terms of such partnership. The original copy of the notice for the above purpose, bearing date April 25, 1884, and signed by W. T. Tuffly and Christine E. McLin, which notice was intended to be published, and was published, in a newspaper printed in the city of Houston, Texas, is in evidence in this cause. You are instructed that said notice is not in compliance with the requirements of the law, in this, that it does not fully state the terms of the limited partnership formed by W. T. Tuffly and Christine E. McLin, but wholly omits to state some of the terms of said partnership. It was therefore ineffectual for the purpose
281 for which it was intended, and the partnership became a general partnership by reason of the failure to give the published

notice of the terms of the partnership required by law, and Mrs. Christine E. McLin became a general and not a special partner, and was such at the date of the deed of assignment, March 23, 1885, and was liable as such; and as she did not join in the deed of assignment under which the plaintiff claims, nor convey to him her individual property for the benefit of creditors, the said deed of assignment is therefore void and interposed no legal obstacle to the levy of the attachments complained of, and you will therefore return a verdict for the defendants."

JAMES G. TRACY,
HENRY H. DOOLEY,
TIMOTHY H. SCANLAN,
JOHN T. BRADY,
GEORGE A. MORRISON,
JOHN HERRIMAN,
JAMES H. DUNHAM,
WILLIAM F. BUCKLEY,
CHARLES H. WEBB,
WILLIAM H. LYON,
JAMES O. CARPENTER, AND
JOSEPH H. T. MARTIN,
By C. ANSON JONES,
*Their Attorney.*

282 Endorsements: "1352. Louis Tuffly, assignee, *v.* James G. Tracy *et al.* Assignments of error. Filed June 29, 1886. C. Dart, clerk, by W. L. Hanscom, deputy."

283 In the Circuit Court of the United States for the Eastern District of Texas, at Galveston, Texas.

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, in the fifth circuit and district aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and of all the proceedings in cause No. 1352 on the law docket of said court, entitled Louis Tuffly, assignee, *vs.* James G. Tracy *et al.*, as the same now appears on file and of record in my office.

Seal United States Circuit Court, Eastern District of Texas.

To certify which witness my hand and the seal of said court, at Galveston, in said district, this 21st day of July, A. D. 1886.

C. DART,
*Clerk U. S. Circuit Court, E. D. T., at Galveston,*
By W. L. HANSCOM, *Deputy.*

284 (NOTE BY CLERK.)—This transcript — made up according to the instructions of the attorneys for the appellants and appellee.

285 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at Galveston, between Louis Tuffly, assignee of the firm of W. T. Tuffly, plaintiff, and James G. Tracy, Timothy H. Scanlan, Henry H. Dooley, John T. Brady, Samuel K. McIlhenny, Thomas R. Franklin, John Herriman, and Geo. A. Morrison, composing the firm of Morrison, Herriman & Co., and said firm; J. H. Dunham, Wm. F. Buckley, and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and said firm; William H. Lyon, James O. Carpenter, and Joseph H. T. Martin, composing the firm of Wm. H. Lyon & Co., and said firm; W. D. Cleveland, W. L. Foley, C. Lombardi, and John Kennedy, defendants, in which suit a final judgment was rendered in said circuit court on the 12th day of April, A. D. 1886, in favor of plaintiff and against defendants, a manifest error hath happened, to the great damage of the said James G. Tracy, Timothy H. Scanlan, Henry H. Dooley, John T. Brady, George A. Morrison, and John Herriman; James H. Dunham, William F. Buckley, and Charles H. Webb; Wm. H. Lyon, James O. Carpenter, and Joseph H. T. Martin, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal United States Circuit Court, Eastern District of Texas.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 8th day of May, in the year of our Lord one thousand eight hundred and eighty-six.

C. DART,
*Clerk of the Circuit Court of the United States for the Eastern District of Texas, at Galveston.*

Allowed by—

CHAUNCEY B. SABIN,
*U. S. District Judge for the Eastern District of Texas.*

286 [Endorsed:] C. L., 1352. Louis Tuffly, assignee, *vs.* James G. Tracy & others. Writ of error to Supreme Court. Filed May 8th, 1886. C. Dart, clerk.

Endorsed on cover: E. Texas C. C. U. S. No. 134. James G. Tracy, Timothy H. Scanlan, Henry H. Dooley, *et al.*, plaintiffs in error, *vs.* Louis Tuffly, assignee of W. T. Tuffly. Filed October 8, 1886.

Office Supreme Court U. S.
FILED.
NOV 20 1889
JAMES H. McKENNEY,
CLERK.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 134.

JAMES G. TRACY and others,
*Plaintiffs in Error,*

*vs.*

LOUIS TUFFLY, Assignee of W. T. TUFFLY,
*Defendant in Error.*

In Error to the Circuit Court of the United States for the Eastern District of Texas.

## BRIEF FOR PLAINTIFFS IN ERROR.

GEORGE HOADLY,
*Of Counsel.*

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

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| JAMES G. TRACY and others, Plaintiffs in Error, vs. LOUIS TUFFLY, assignee of W. T. Tuffly, Defendant in Error. | No. 134. |

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

## BRIEF OF GEORGE HOADLY FOR PLAINTIFFS IN ERROR.

### Statement of Case.

This is a writ of error prosecuted by James G. Tracy, Henry H. Dooley, T. H. Scanlon, John L. Brady, George A. Morrison and John Harriman, James H. Dunham, William F. Buckley, Charles H. Webb, William H. Lyon, James O. Carpenter and Joseph H.

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*Note.* References designated "fol." refer to marginal paging of Transcript.

T. Martin, to reverse a judgment rendered at the March Term of the Circuit Court for the Eastern District of Texas in favor of Louis Tuffly against the said James G. Tracy, and against Henry H. Dooley, Timothy H. Scanlon and James T. Brady, sureties on the official bond of said Tracy as Marshal of the United States for the Eastern District of Texas, and against George A. Morrison and John Harriman, composing the firm of Morrison, Harriman & Co., James H. Dunham, William F. Buckley and Charles H. Webb, composing the firm of Dunham, Buckley & Co., and William H. Lyon, James O. Carpenter and Joseph H. T. Martin, composing the firm of William H. Lyon & Co., for the sum of $17,000, with interest thereon at the rate of seven per cent. per annum from date of judgment, and a further judgment rendered in favor of the defendant James G. Tracy upon bonds given him as indemnity for attaching the property of the plaintiff Louis Tuffly, as follows: Against the said Dunham, Buckley and Webb and their sureties in $2,500; against Lyon, Carpenter and Martin and their sureties in $2,600; and against Morrison and Harriman and their sureties in the sum of $17,000.

The action was begun by Louis Tuffly. The writ of error appears twice, viz., on fols. 256 and 285 of the Record; the citation and service appear on fol. 266; the bond for *supersedeas* on fol. 260; the judgment is to be found at fol. 45.

This action was commenced by petition (fol. 4), filed July 3, 1885, in the District Court of Harris County, Texas (fols. 1–13), by Louis Tuffly, as assignee of the firm of W. T. Tuffly against James G. Tracy, as principal, and Timothy H. Scanlon, Henry H. Dooley and John T.

Brady, as sureties on the bond of Tracy, as Marshal of the United States for the Eastern District of Texas.

The breach of the bond recited in the petition is this: that on the 23d day of March, 1885, the firm of W. T. Tuffly, as general partner, and of C. E. McLin, a *feme sole*, as special partner, conveyed and assigned, by a proper instrument in writing (copied into the petition), all the property, real and personal, of said firm, as well as all the individual property of said W. T. Tuffly, to plaintiff, for the benefit of the creditors of the said firm, and for the benefit of the individual creditors of said assignor; that the deed of assignment was duly acknowledged; that the plaintiff accepted the assignment and gave his bond as assignee; that the bond was duly approved by the Judge of the Eléventh Judicial District of Texas, and filed for record in the County Clerk's office in Harris County, Texas; that, having duly qualified as assignee, said Louis Tuffly, on March 23, 1885 (fol 10),

"took into his possession, under and by virtue of the said assignment, the stock of goods, wares and merchandise belonging to said firm of W. T. Tuffly situated in the Burns Building in the City of Houston; also the furniture, shelves, counters and stationery in said store; that, on the 31st day of March, 1885, said James G. Tracy, acting under the color of his office as Marshal of the United States for the Eastern District of Texas, unlawfully, forcibly and wrongfully seized and took from and out of the possession of plaintiff all of said stock of goods and all fixtures, counters, furniture and stationery in said storehouse."

That Tracy at first refused to seize the goods but was induced to take this course by an indemnity bond given him; that Scanlon, Dooley and Brady are liable as sureties on the official bond to the extent of $20,000

of the damages done to plaintiff; that the seizure of the stock of goods by Tracy constituted a breach of the conditions of the bond; the premises considered, the plaintiff prayed for process and for judgment.

Thereupon, on the 19th day of October, 1885, the cause was removed upon the petition of Tracy, Scanlon, Dooley and Brady, into the Circuit Court of the United States for the Eastern District of Texas, on the ground that the defense arises under and involves the construction of the laws of the United States. The petitioners deny that they are liable upon said bond as sued, and justify the said alleged trespass under the authority of the said United States Circuit Court, and the laws of the United States. The cause was ordered to be removed, no objection being made to said petition for removal, and no cause being shown why the same should not be granted (fol. 20), and no motion to remand having been made, proceeded to issue, trial and final judgment in the Circuit Court of the United States for the Eastern District of Texas.

Before removal, viz., on October 10, 1885, the defendants had filed an original answer (fol. 14); afterwards leave was given them to amend, and they amended (fol. 23) by filing, on November 6, 1885, what is entitled their first amended original answer, but consisting of a general demurrer and of seven special demurrers; also of an answer. The seven special demurrers show, *first*, that C. E. McLin did not join in the alleged assignment; *secondly*, that the assignment was only made for the benefit of such W. T. Tuffly's creditors as would consent to accept their proportional share of the property conveyed and discharge him from their respective claims; *thirdly*, that the assignment, being

made for the benefit of such creditors as would accept their proportional share and release the debtor, assumes and purports to convey only the property of said Tuffly which he owns as copartner or individually, and not the property of the firm of W. T. Tuffly; *fourthly*: because the assignment provides that the assignee is only to apply the proceeds of the property when he shall have sold, collected and converted the entire property conveyed to him, whereas, by law, he is required to make proper distribution whenever he shall have on hand funds sufficient to pay ten per cent. of the debts due to the assignor; *fifthly:* because the assignment admits the individual creditors of W. T. Tuffly to an equal participation with partnership creditors, and thereby gives them an unlawful preference over the creditors of the partnership; *sixthly:* because the petition does not show that any creditor of W. T. Tuffly has consented or accepted the terms of the assignment, nor the amount or value of the claim of any such creditor; *seventhly:* because the petition does not set forth with sufficient particularity how the defendant acted as United States Marshal, nor that he acted under any process of Court, and does not set forth such state of facts as would entitle the plaintiff to recovery on the Marshal's bond.

The answer, subjoined to the general and special demurrers (fol. 27), denies the averments of the petition; avers that Tracy was duly qualified as United States Marshal, and Scanlon, Dooley and Brady were sureties on his bond; that George A. Morrison and John Herriman, composing the firm of Morrison, Herriman & Co., sued W. T. Tuffly, on or about March 31, 1885, in the Circuit Court of the United States for the Eastern

District of Texas, for the amount of $8,821.13, and D H. Dunham, William F. Buckley and Charles H. Webb, composing the firm of Dunham, Buckley & Co., sued him for about $1,007.93; and William H. Lyon, James O. Carpenter and Joseph H. T. Martin, composing the firm of William H. Lyon & Co., sued him for about $1,279.58, and on the same day they procured to be issued from said Court writs of attachment commanding the United States Marshal for the Eastern District of Texas to attach so much of the property of W. T. Tuffly as should be sufficient to make the amounts therein specified and costs of suit; that in obedience to said writs, said Marshal seized certain property of said Tuffly, consisting of goods, wares and merchandise and store fixtures in the store then occupied by and in the possession of said Tuffly, and afterwards, under the order of the Circuit Court, sold the property and paid the proceeds into the Registry of the Court, and defendants justify said seizure and sale under the process and orders aforesaid, and say, that at the time of the bringing of the suits and levy of the attachments, said copartnership of W. T. Tuffly was justly indebted to them in said sums, and that the property so attached was in law the property of said W. T. Tuffly at the time of said seizure and levy of attachment, and liable for his debts; that the said W. T. Tuffly and C. E. McLin were, at the time of said seizure, and a long time prior thereto, general partners under the firm name of W. T. Tuffly, and deny that they ever complied with the provisions of the law for the formation of special partnerships, and that, if they did so comply, which is denied, that the capital stock of C. E. McLin was unlawfully reduced after the for-

mation of said partnership, below the amount required to be kept by her in the partnership, and deny that the necessary notice of the formation of said partnership was given as required by law. Defendants further say that the pretended assignment, if ever executed by Tuffly, was not made in contemplation of insolvency, and that the firm was not insolvent when made; that C. E. McLin is a sister of W. T. Tuffly, and that the pretended assignee, Louis Tuffly, is their cousin, and also claims to be a creditor of said firm of W. T. Tuffly; that C. E. McLin also claims an indebtedness in her favor from W. T. Tuffly, alleged to have accrued after the formation of said partnership, of several thousand dollars; that said pretended assignment was contrived and executed, in pursuance of a fraudulent understanding between W. T. Tuffly and Louis Tuffly, to protect and pay said pretended debts, and to hinder, delay and defraud plaintiffs' attachment and the creditors of W. T. Tuffly, and to unlawfully prefer the debt of C. E. McLin, and to allow her to participate in the benefits of said pretended assignment, and that she was, at the time of the said assignment, the owner of property in her individual right, which, as well as her partnership property, she wholly failed to convey by said pretended assignment.

On November 17, 1885, plaintiff had leave to amend his petition, and, by way of amendment, as well as replication to the defendant's original answer (fol. 36), averred that the defendants are estopped from alleging anything against the partnership of W. T. Tuffly, as general partner, and C. E. McLin as special partner, by way of defense, and estopped from claiming that C. E. McLin was a general partner, because

all the plaintiffs in said causes wherein the writs of attachment were sued out by plaintiffs, and issued and levied on the property of the plaintiff, as assignee of W. T. Tuffly, to wit: Morrison, Herriman & Co., Dunham, Buckley & Co. and Wm. H. Lyon & Co. had full and ample notice of said partnership, acquiesced therein and assented to the same and dealt with the same from and after the 24th of April, 1884, as will appear by a written instrument attached, signed by their duly authorized agent Andrew Wilson. And plaintiff further avers that said parties, well knowing the existence of said partnership, by their acts, gave said special partnership standing and credit, and induced many others to give credit thereto, for whose benefit said assignment was made, and that all the creditors, except said plaintiffs, in the causes in which said attachments were sued out, have accepted and proved their claims under said deed of assignment, and are now waiting payment of the same, and further denies that there was any fraud in the assignment, but, on the contrary, avers that the same was executed in good faith and with no other intent than properly to distribute the estate of the said firm of W. T. Tuffly, and plaintiff denies that the amount of contribution of said special partner was ever, in any manner, reduced or intended to be reduced or diverted from said co-partnership.

On December 10th, 1885, the said plaintiffs in error, composing the firms of Morrison, Herriman & Co., Dunham, Buckley & Co. and Wm. H. Lyon & Co., were made defendants on their own motion (fol. 38), and filed (fol. 39) their appearances, adopting as their own the demurrers, pleas and answers of their co-defendants.

On the same day the plaintiff filed a demurrer to the answer (fol. 40):

"In so far as the same sets up fraud in the assignment between the assignee and assignor, because same constitutes no defense in law to this action."

On April 6th, 1886 (fols. 41, 42), the defendant Tracy amended his answer, and thereby showed that, for his indemnification, bonds had been given him by Morrison, Herriman & Co., Dunham, Buckley & Co. and Wm. H. Lyon & Co., with sureties, providing that, in the event of judgment against him, he might have judgment over on said bond.

The cause was tried before a jury, and verdict rendered for the plaintiff against Tracy, and the sureties on his official bond, Scanlon, Dooley and Brady, and against the attaching creditors, Morrison, Herriman & Co., Dunham, Buckley & Co. and Wm. H. Lyon & Co., for the sum of $17,000; and also in favor of Tracy, on the indemnity bonds against Dunham, Buckley & Co. and their sureties for $2,500; against Wm. H. Lyon & Co. and their sureties for $2,600; and against Morrison, Herriman & Co. and their sureties for $17,000; and judgment was rendered accordingly (fol. 45).

Whereupon the defendant moved for a new trial, and assigned twenty-five reasons therefor, (fols. 49–56), which motion was overruled, (fol. 56), and three bills of exceptions were signed, setting out the testimony sufficiently to enable the defendants to present their exceptions. The *first* of these bills of exceptions, signed in open Court, made May 7, 1886, shows that, on the call of the case for trial, the defendants presented and urged their demurrer and exceptions to the

petition and amended petition of plaintiffs, which were overruled, (fol. 62), and whereupon the defendants excepted, and their exceptions were noted on the record.

The *second* bill of exceptions, filed May 7, 1886, showed that the plaintiff introduced in evidence the certificate of formation of special partnership between W. T. Tuffly and Christine E. McLin, (fol. 63), with the affidavit and certificate of record attached; also the deed of assignment to the plaintiff with acknowledgment, certificate and schedules attached, (fol. 67), also the bond of the assignee, Louis Tuffly, (fol. 72), and its approval by the Court, (fol. 72), also the advertised notice of special partnership between W. T. Tuffly and Christine E. McLin (fol. 73), also the agreement already referred to as attached to the amended petition, which agreement was dated April 24th, 1884, and was in these words (fol. 74):

"The undersigned, creditors of the late firm of R. W. McLin & Company, in consideration of the assumption of all the indebtedness of the said late firm by the firm of W. T. Tuffly, composed of W. T. Tuffly, general, and Christine E. McLin, special partner, as appears by the certificate by the ———, signed, hereby release the estate of R. W. McLin, deceased, from any and all liabilities on account of the obligations of the said firm of R. W. McLin & Co., either by note or open account, or otherwise.

"Houston, April 24, 1884."

The release was signed by Morrison, Herriman & Co., Dunham, Buckley & Co., and Wm. H. Lyon & Co., and other creditors of the firm of R. W. McLin & Co., and by Andrew Wilson. When this agreement was offered in evidence, the plaintiff's counsel were asked to state the purpose for which it was offered,

whereupon they responded (fol. 75) that it was offered for the purpose of showing notice to the defendants Morrison, Herriman & Co., Dunham, Buckley & Co., and Wm. H. Lyon & Co., of the formation and existence of a special partnership between W. T. Tuffly and Christine E. McLin, and also to sustain plaintiff's plea of estoppel. The defendants objected to the testimony on the ground that it was irrelevant and immaterial, and for the further reason that it was not the way to prove notice of the formation of special partnerships, to establish an estoppel against defendants, but the objections were overruled by the Court, and the agreement admitted in evidence; whereupon the defendants excepted; the plaintiffs also proved the bond of Tracy as United States Marshal, and its approval, and the oath of qualification taken by the Marshal (fol. 77). The plaintiff also introduced evidence tending to show that he had taken possession of the assigned property and remained in possession until it was taken from him by Tracy as United States Marshal, under the writs of attachment, issued in favor of Morrison, Herriman & Co., Dunham, Buckley & Co. and Wm. H. Lyon & Co. He also proved a list of creditors who had accepted the assignment, their claims amounting to $7,116 26, not including the claim of Mrs. McLin for about $8,000; he also introduced in evidence the writs of attachment issued in favor of Morrison, Herriman & Co., Dunham, Buckley & Co. and Wm. H. Lyon & Co., and the Marshal's returns thereon, showing that he had taken the property into his possession under the writs (fol. 82): That the property seized under said writs was the same property for the seizure

of which the suit is brought, and was worth the amount found by the jury.

" Plaintiff also introduced evidence tending to show that, at the time of the making of the assignment by the firm of W. T. Tuffly, on March 23, 1885, said firm was not able to pay its debts as they matured, and that said assignment was made in contemplation of insolvency, and that the property assigned was taken possession of by Louis Tuffly, plaintiff herein, under said deed of assignment."

There was also proof tending to show that said firm was not insolvent on March 23, 1885 (fol. 88). In addition to this testimony, and on the issue of estoppel, testimony was given as follows (fol. 88): that, on March 26, 1884, R. W. McLin, who was partner with W. T. Tuffly, under the firm name of R. W. McLin & Co., died, leaving surviving him as his sole heirs, his wife, Christine E. McLin, and their two minor children; that after his death, one Andrew Wilson came to Houston, representing creditors of the firm, among them the three attaching firms, and advised a special partnership between W. T. Tuffly and Christine E. McLin; that the creditors, who signed the agreement, releasing R. W. McLin & Co. and accepting the assumption of the debts of the firm of W. T. Tuffly, knew that Mrs. McLin was a special partner; that Mrs. McLin put $6,419.36 into the concern; that these creditors knew it and sold W. T. Tuffly goods after this date, and that the bills upon which they sued and attached are for such goods; that Wilson was the instigator of the entire arrangement; that W. T. Tuffly said he wanted to run on a smaller scale, but Wilson persuaded him and Mrs. McLin that there was no show in Houston for a second-class store, but only for a

first-class store; and that Morrison, Herriman & Co. would help them out. That Wilson knew they had this special partnership, and sold them goods afterwards; that there was no concealment and no attempt to mislead him; that he was there the whole time every day, and virtually ran the business for two or three weeks himself, viz.: from the time he came to Houston, from the 1st of April to the tenth of April, 1883, until he left the State, some time about the latter part of April, 1884, say about the 24th or 25th of April, 1884; that Wilson came to Houston upon a telegram of W. T. Tuffly, advising him of the death of McLin, and asking him to represent the creditors in Houston; that the special partnership was the result; that the firm of R. W. McLin & Co. owed a great many debts and had property; that Mrs. Christine E. McLin sold out her interests to W. T. Tuffly, and that he had the money in bank and at her disposal, and that Wilson induced her to become a special partner and to pay the money into the business; that her brother, W. T. Tuffly, was adverse to her jeopardizing her money by going into the business; that it was known when Wilson was at Houston that Mrs. McLin would have about $8,000 insurance money on the life of her husband, and it was expected that she would make loans to the firm.

Defendants introduced in evidence the deposition of Wilson showing that as representative of a large number of creditors of R. W. McLin & Co., he caused their indebtedness to be transferred to the new firm, accepting its liability for that of the former firm; that he did not carry the transfer from Mrs. McLin to Tuffly to get her signature; that he believed her to be a special partner, and that the amount to the credit of her husband in

the firm of R. W. McLin & Co., as represented by his share in the various properties of the firm, was her contribution to the special partnership: also that he assisted in making an accounting of the properties of the firm of R. W. McLin & Co. to see if it was solvent; that he represented no one but creditors and had nothing to do with forming the firm of W. T. Tuffly; that he did not advise it or have anything to do with its formation, and that he left Houston by the 23d, 24th or 25th of April, 1884.

The evidence of Tuffly also showed (fol. 94), that he advised with an attorney, Mr. Hamblen, about the special partnership, and had him draw up the papers; that Wilson came out in the interest of the creditors, and was a personal friend of Mrs. McLin and himself, and that he, Tufily, sought Wilson's advice and counsel, and also had the advice of counsel advising him and Mrs. McLin; that the attorney drew the special copartnership agreement and all other papers relating to the transfer.

Thereupon the petition, affidavits and bonds for attachment, orders and judgments in the several suits of Morrison, Herriman & Co., Dunham, Buckley & Co. and Wm. H. Lyon & Co. against W. T. Tuffly were introduced in evidence. They occupy folios 94 to 146 inclusive, and are repeated in the third bill of exceptions, occupying folios 194 to 245 inclusive of the record. Proof was also given (fol. 146) that the interest of R. W. McLin in the firm of R. W. McLin & Co., composed of R. W. McLin and W. T. Tuffly,

"was community property of himself and his wife Christine E. McLin, that is to say, property acquired by the joint industry and skill of his said wife and himself after their marriage."

No administration was ever had upon the estate of R. W. McLin, deceased.

It also appeared (fol. 146) that the mother of Mrs. Christine E. McLin had given her money, which went into the business, and that at the date of R. W. McLin's death his firm was largely indebted, and after his death

" his surviving wife, Christine E. McLin, in consideration of having the estate of R. W. McLin, deceased, released from such debts and $6,419.36 in cash, she, as survivor, conveyed to W. T. Tuffly, all the property of said late firm."

Evidence was also introduced by the plaintiff that she contributed this money in cash to the firm of W. T. Tuffly, and that she got it from a sale by her to Tuffly of her late husband's interest in the firm of R. W. McLin & Co.; that an estimate was made after the death of R. W. McLin of the amount of his interest, and that it was found to be $6,419.36 ; that this interest was arrived at by estimating the assets of the firm, including the debts due to it and deducting his liabilities ;

" that the conveyance of Mrs. McLin to W. T. Tuffly, of this interest of her deceased husband in said firm of R. W. McLin & Co. constituted her contribution to the common stock, and that she did not in fact contribute any actual cash, as her contribution to the common stock of the firm of W. T. Tuffly, in order to make her a special partner therein, except as hereinbefore stated."

The plaintiff also introduced the conveyance or transfer by Mrs. Christine E. McKin to W. T. Tuffly with a trial balance of the books of the firm of R. W. McLin & Co. attached. This is dated April 24, 1884, and recites that W. T. Tuffly has arranged for the full settlement of all claims against said late firm, and obtained a release of the estate of R. W. McLin from liability on

account of the same, and, in consideration thereof' transfers and assigns (fol. 148)—

"unto W. T. Tuffly all and singular the goods, wares and merchandise belonging to said firm of R. W. McLin & Co., and also all book accounts, stock and certificates of stock and all real estate of said firm, and bills receivable and all property, of every name and nature, belonging to said firm, to be held by him from this day."

Attached to this conveyance is the trial balance of R. W. McLin & Co., April 1, 1884, showing cash on hand, $180,324; merchandise, $30,198.35; sundry other items of credit, consisting of real estate, store fixtures, horse and wagon, personal accounts and building association stock, the total amounting to $42,701.76. The debit side of the account consists of personal accounts, $14,604.22; bills receivable, $10,389.44; W. T. Tuffly, $11,288.74; R. W. McLin, $6,419.36; total, $42,071.76.

Other evidence was given (fol. 149) tending to show that in making this trial balance, a mistake was made by which some $400 or $500 of liabilities was omitted, which would have reduced the net interest of R. W. McLin by one-half of said omitted liabilities.

Other evidence was given, tending to show that, after this trial balance, and before the formation of the partnership between Tuffly and McLin, $314.30 was withdrawn by Mrs. McLin from the partnership funds of R. W. McLin & Co., viz.: on April 10, 1884, and was charged to her capital account, and was not replaced by her at any time, and that, at the time of the formation of the partnership between her and W. T. Tuffly, when said sum of $6,419.36 was placed to the credit of her capital account, the above sum of $314.30 stood as a debit against it; also evidence tending to show that,

at the time of the assignment she owned property in her individual right over and above that exempt by law from execution, and that she did not put in the $6,419.36 necessary to make her a special partner in the firm of W. T. Tuffly by $314.30, and that the trial balance was based on the assumption that the goods were worth a certain amount, and that a certain percentage of the debts could be collected; also, that after the formation of the copartnership there was an alteration in her capital by a reduction thereof, the amount of $1,002.52, May 20, 1884, made up of the said sum of $314.30, which she had drawn from said partnership funds, and by merchandise bought by her from the store, and that her capital stock did not earn profits which would enable the amount withdrawn by her to be called such; that there was a net loss during the first three months and a fraction, ending July 31, 1884, of which Mrs. McLin's share was $591.17; that Mrs. McLin's capital was reduced by property withdrawn, by goods purchased and charged to her capital account, and cash drawn by her, so that it stood on August 1, 1884, at $4,445.96; on January 1, 1885, $3,913.33; and at the date of the assignment $3,636.56.

Evidence was introduced by the plaintiff to show that, from the time of the death of R. W. McLin to the time of the assignment, Mrs. McLin had an account of $6,419.36 as her capital; that she loaned the firm of W. T. Tuffly divers sums of money, for which she accepted his promissory notes; that the charges to her capital account were made, not by her directions, but by those of the bookkeeper without special instructions; that in all $7,998 in money was loaned by her to the firm, and that her purchases never exceeded the

amount she had loaned; that the bookkeeper made all the entries (fol. 154), under Tuffly's directions, and that Tuffly was cognizant of the way it was done; that it is usual in bookkeeping to charge all sums drawn by partners to their capital account, but that there are different ways in keeping books in that respect, the difference being one of form, not of substance; that from the time the partnership was formed until the date of the assignment Mrs. McLin drew out in cash $1,588.48; that Tuffly's capital when the partnership was formed was $11,288.74, which, on August 1, 1884, was reduced to $9,232.11; on January 1, 1885, to $8,625; and at the date of assignment stood at $7,908.87; and that Tuffly before the assignment had paid Mrs. McLin $802.56 upon her notes for borrowed money. That afterwards she presented her claim to the assignee Louis Tuffly for said borrowed money; that he refused to allow the same; that she brought suit against him in the District Court of Harris County, Texas, and that a decree of that Court was given in her favor for the full amount of said claim and interest, to wit, $8,509.04 (fols. 154, 155).

" and established the same as a claim against the estate of W. T. Tuffly in the hands of said Louis Tuffly; that no credit or allowance was made in said judgment for the interest paid on said notes as above set forth or for moneys and goods drawn by Mrs. McLin from the store and business of W. T. Tuffly; that none of the parties defendant in this action were parties to that decree; that after said judgment was rendered the attorney for Mrs. McLin agreed with the attorney for Louis Tuffly to remit whatever amount Mrs. McLin owed the firm of W. T. Tuffly and there was an understanding that the amount should be credited on the notes, but it was not done. The agreement was that whatever advances were made to Mrs. McLin or goods purchased by her

out of the firm of W. T. Tuffly, were to be remitted from the judgment on these notes. None of the defendants in this action were present at the making of this agreement and were not parties thereto."

It was further proved that none of the attaching firms or any of their members had ever accepted or assented to the assignment; that the partnership business of the firm was carried on continuously from April 16, 1884, to March 23, 1885, without any renewal of the special partnership certificate or other notice than that already referred to.

The indemnity bonds were introduced in evidence, and the Court then charged the jury, substantially to the effect that if the limited partnership was recognized by the three attaching creditors, and, during its existence, was dealt with and credited as such by them, and sued therefor, and its property attached after its assignment, that Mrs. McLin and W. T. Tuffly always treated it as a special or limited partnership, and that Mrs. McLin loaned money and sued the plaintiff, as its assignee, then the jury might deem it a limited partnership, and regard the assignment to plaintiff as valid; that if the assignment was made at a time when the W. T. Tuffly paper was maturing faster than it could be met in the ordinary course of business, and such assignment was made in good faith, and in contemplation of insolvency, and if the defendant Tracy, as Marshal, seized the property so assigned under and by virtue of the attachments, the jury should find for the plaintiff as against the defendant and the sureties on his official bond, and the three firms of attaching creditors, for the the value of goods attached.

At the request of the defendant, the Court charged

the jury that if Mrs. McLin never contributed the amount to the capital stock necessary to make her a special partner, or if she afterward diminished the amount of her capital stock, and that these facts were unknown to the attaching creditors, then neither their recognition and dealings with Tuffly and Mrs. McLin as a limited partnership or the suing of Tuffly in ignorance of said facts estops or precludes them, or any of them, from showing that said partnership was never in fact legally formed as a limited partnership, nor in showing afterwards, by reason of the alteration and diminishing of Mrs. McLin's capital stock, it was rendered a general partnership.

Exceptions were taken to the charge and special charges were asked by the defendants, which were refused by the Court. These will be noticed hereafter.

The *third* bill of exceptions was taken May 7th, 1886, but as this consists in great degree of a repetition of what has already been stated, it is unnecessary to call special attention thereto until I reach the proposition of law presented by it.

## Assignment of Errors.

(See Record, fol. 269.)

I. The Circuit Court erred in overruling the general demurrer filed by defendants herein.

II. The Circuit Court erred in overruling the first special demurrer or exception filed by the defendants herein, on the ground that the petition showed that the

alleged firm of W. T. Tuffly was composed of two copartners, and that only one of the copartners joined in the alleged deed of assignment under which the plaintiff claimed, and showed no reason why the other copartner did not join therein.

III. The Circuit Court erred in overruling the second special demurrer or exception filed by defendants herein, on the ground that the alleged deed of assignment set forth in the petition was illegal and void (1) because only signed by one of the copartners; (2) because the same purported to be made for the benefit of such of W. T. Tuffly's creditors only as would consent to accept their proportionate share of the property conveyed and discharge him from their respective claims, and did not include within its provisions and benefits the creditors of himself as copartner of the alleged firm of W. T. Tuffly; and (3) because it did not purport or attempt to convey the entire partnership property of the firm, but only the individual property of said Tuffly and his property as a copartner of the alleged firm of W. T. Tuffly.

IV. The Circuit Court erred in overruling the third special demurrer or exception filed by the defendants herein, on the ground that the alleged deed of assignment was illegal and void, because it showed on its face that it was for the benefit only of such creditors as would accept their proportional share of the property conveyed, whereas it only attempted and purported to convey the property of said Tuffly which he owned as copartner or individually, and did not convey the property of the firm of W. T. Tuffly.

V. The Circuit Court erred in overruling the fourth special demurrer or exception filed by defendants herein, on the ground that the alleged deed of assignment by its terms unlawfully delayed and hindered the creditors of the assignor by providing that the assignee was to apply the proceeds of the property conveyed, ratably or otherwise, to the payment of the debts only when he should have sold, collected and converted the entire property conveyed to him.

VI. The Circuit Court erred in overruling the fifth special demurrer or exception filed by defendants herein, on the ground that the alleged deed of assignment was illegal and void, because by its terms it admitted the individual creditors of W. T. Tuffly to an equal participation with partnership creditors in the proceeds of the partnership property, and thereby gave them an unlawful preference over the creditors of the partnership.

VII. The Circuit Court erred in overruling defendants objections to the introduction in evidence of the deed of assignment from W. T. Tuffly to Louis Tuffly, which objections were :

1. Because it showed on its face that Mrs. C. E. McLin was a partner in the firm of W. T. Tuffly.

2. That she was scheduled as a creditor of said firm ; and

3. Because the said assignment thereby allows her to participate in the benefits of the assignment, and thereby reserves a benefit to one of the partners and gives her an unlawful preference over the creditors of the partnership.

And in allowing said deed of assignment to be read in evidence over defendants' said objections thereto, as shown by defendants' third bill of exceptions.

VIII. The Circuit Court erred in overruling defendants' objections to the introduction in evidence of the notice of the formation of special partnership between W. T. Tuffly and Christine E. McLin, which objections were on the ground that it was not in compliance with law, in this, that it does not state the terms of the partnership fully; it fails to state the general nature of the business intended to be transacted by the alleged partnership, the period at which the partnership is to commence, how long it is to be continued or when it is to terminate, and also omits to state where the business is to be transacted; and the Court erred in allowing said notice to be read in evidence over defendants' said objections thereto, as shown by defendants' third bill of exceptions.

IX. The Circuit Court erred in overruling defendants' objections to the introduction in evidence of the agreement of the creditors of the firm of R. W. McLin & Co., dated April 24, 1884, and attached to plaintiff's amended petition and replication, filed Nov. 17, 1885, which objections were:

1. That it was irrelevant and immaterial for the purpose for which it was offered, viz., to show notice to defendants Morrison, Herriman & Co., Dunham, Buckley & Co. and William H. Lyon & Co. of the formation and existence of a special partnership between W. T. Tuffly and Christine E. McLin, and to sustain plaintiff's

plea that defendants were estopped to deny the formation and existence of said special partnership or to show that it was not legally formed or carried on; and

2. That it was not the way to prove notice of the formation of a special partnership and to prove estoppel against the defendants.

And the Court erred in allowing said agreement to be read in evidence over said objections thereto, as shown by second bill of exceptions.

X. The Circuit Court erred in charging the jury that if the limited partnership alleged by plaintiff was recognized as such in its inception by the three attaching creditors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor and its property attached as such after the assignment, and that its other creditors so treated and dealt with it and accepted the assignment to plaintiff as such, and that Mrs. McLin, named therein as the special or limited partner, and W. T. Tuffly, named therein as the general partner, always treated it as a special or limited partnership, and that Mrs. McLin loaned it money, as claimed, and subsequently sued the plaintiff, as its assignee, therefor, then and in such case they might likewise deem the same a limited partnership and regard the assignment to plaintiff as valid.

XI. The Circuit Court erred in refusing to charge the jury, at the request of defendants, that if they found for plaintiff they should return a verdict for the amount only of the claims of creditors who had consented to the assignment (excepting Mrs. McLin's claim) accord-

ing to the proof, with interest thereon, at the rate of eight per cent per annum from January 1, 1886.

XII. The Circuit Court erred in refusing to charge the jury, at the request of the defendants, as follows:

"The instrument offered in evidence by plaintiff, bearing date the 24th day of April, 1884, and signed by Morrison, Herriman & Co., Dunham, Buckley & Co., William H. Lyon & Co., and other creditors of the firm of R. W. McLin & Co., through their agent, Andrew Wilson, is only a release of the estate of R. W. McLin, deceased, from all liability on account of their respective claims.

"The recitations in it that said claims had been assumed by the firm of W. T. Tuffly, composed of W. T. Tuffly as general and Christine E. McLin as special partner, as appeared by their partnership certificate by them signed, does not preclude nor estop the defendants in this case from showing that such limited partnership was never in fact formed, or that by reason of violation of the law, it was afterward converted into a general partnership."

XIII. The Circuit Court erred in refusing to charge the jury, at the request of the defendants, as follows:

"No statements, representations or suggestions made by Wilson to W. T. Tuffly and Mrs. McLin relative to the formation of a limited partnership, as testified to by them, can make it a limited partnership if it is not, or was not such in fact and law, nor can they operate to prevent the defendants in this cause from showing that the requirements of the law were not complied with in forming the limited partnership or from showing that the provisions of the law were afterward violated by them so as to make it a limited partnership, and you will therefore disregard such testimony."

XIV. The Circuit Court erred in refusing to charge the jury, at the request of the defendants, as follows:

"If you find that before the time of the contribution by Mrs. Christine E. McLin to the common stock of the

copartnership of W. T. Tuffly she had withdrawn a sum of cash from the surviving partner of R. W. McLin which was to her debit at the time of such contribution and had not been repaid by her, then she cannot be said to have contributed the full amount specified in the certificate as the amount to be paid by her into the common stock; and if you so find, then your verdict will be for the defendants."

XV. The Circuit Court erred in refusing to charge the jury, at the request of the defendants, as follows:

"If by reason of the failure to comply with the law in the first instance or by reason of violation of law after the partnership was formed the alleged limited partnership became a general partnership, then it so continued under the law and the facts of this case; and if you find, under this and other instructions, that it was a general partnership at the date of the alleged assignment, March 23, 1885, then you are charged that said alleged assignment was illegal and void because of the failure of Mrs. McLin to join in it or to convey her individual property to the assignee, and in that event your verdict should be for the defendants."

XVI. The Circuit Court erred in refusing to charge the jury, at the request of the defendants, as follows:

"If the proof shows that after the formation of the alleged special partnership between Christine E. McLin and W. T. Tuffly the said Christine E. McLin altered or diminished her capital stock in the partnership by the withdrawal of cash or merchandise, or both, this at once worked a dissolution of the partnership, and the partnership carried on thereafter was in law a general partnership, and no payment, advance, or loan thereafter made by her to Tuffly or to the partnership could restore its character as a special or limited partnership, and if you so find, your verdict must be for defendants."

XVII. The Circuit Court erred in refusing to charge the jury, at the request of the defendants, as follows:

"It is claimed by the plaintiff, Louis Tuffly, that the copartnership or firm of W. T. Tuffly was a limited

partnership, composed of W. T. Tuffly as general partner and Christine E. McLin as special partner.

"It is claimed by defendants that Tuffly and said Christine E. McLin were both general partners, and that said Christine E. McLin was a general and not a special partner, for the reason, among others alleged by them, that she did not comply with the requirements of the law governing limited partnerships. On this question you are instructed that limited partnerships may consist of one or more persons, who shall be called the general partners, and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners. They are also required to make and severally sign a certificate which, among other things, shall contain the amount of capital which each special partner shall have contributed to the common stock. This certificate, after having been acknowledged by the parties in the same manner as conveyances of land are acknowledged, shall be filed in the office of the Clerk of the County Court of the County in which the principal place of business of the partnership shall be situated. At or before the time of filing this certificate the sum specified in the certificate to have been contributed by the special partner to the common stock must have been actually and in good faith paid in cash; and if this is not so actually and in good faith paid in cash at or before said filing, then all persons interested in such partnership shall be liable for all the engagements thereof as general partners, and no payment into the fund thereafter by the special partner can relieve him from the consequences of failure to pay within the time above specified; so also the sum to be contributed by the special partner must have been actually and in good faith paid in cash and cannot be contributed in property of any kind, however valuable it may be. If the proof shows you that Mrs. McLin's deceased husband, R. W. McLin, had a net interest, at or about the time of his death, in the firm of R. W. McLin & Co., and that in consideration of the arrangement by W. T. Tuffly for full settlement of all claims against the said firm of R. W. McLin & Co., and the obtaining of a release of the estate of R. W. McLin from liability on account of the same, assigned and transferred to W. T. Tuffly all the goods, wares and merchandise and other

properties of said firm, and that the interest so conveyed constituted her contribution to the common stock to make her a special partner, then you are instructed that this would not be such contribution of actual cash as the law requires or contemplates, no matter what the outward form of the transaction was; and in such case Mrs. McLin would have thereupon become a general partner and liable as such, and no advance, loan, or payment thereafter made by her to W. T. Tuffly or to the firm would change her status from that of a general partner; and if you so find, then you are instructed that it was essential to the validity of the assignment that she should have joined in it and conveyed to the assignee her indivdual property not exempt, and that as she did not do so, the assignment would be illegal and void, and that your verdict should be for the defendants."

XVIII. The Circuit Court erred in refusing to charge the jury, at the request of the defendants, as follows:

"The law requires persons who have formed a limited partnership to cause to be published, in the manner and for the time required by the law, a notice, giving the terms of such partnership. The original copy of the notice for the above purpose, bearing date April 25, 1884, and signed by W. T. Tuffly and Christine E. McLin, which notice was intended to be published and was published in a newspaper printed in the City of Houston, Texas, is in evidence in this cause. You are instructed that said notice is not in compliance with the requirements of the law, in this, that it does not fully state the terms of the limited partnership formed by W. T. Tuffly and Christine E. McLin, but wholly omits to state some of the terms of said partnership. It was, therefore, ineffectual for the purpose for which it was intended, and the partnership became a general partnership by reason of the failure to give the published notice of the terms of the partnership required by law, and Mrs. Christine E. McLin became a general and not a special partner, and was such at the date of the deed of assignment, March 23, 1885, and was liable as such; and as she did not join in the deed of assignment under which the plaintiff claims, nor convey to him her

individual property for the benefit of creditors, the said deed of assignment is, therefore, void and interposed no legal obstacle to the levy of the attachments complained of, and you will, therefore, return a verdict for the defendants."

## ARGUMENT.

### I.

### Dilemma of the Defendant in Error.

The defendant in error, Louis Tuffly, is, I respectfully submit, in this dilemma. He brings this suit as assignee of W. T. Tuffly, a special partnership composed of W. T. Tuffly, general partner, and Christine E. McLin, special partner, but he is in this dilemma. If he assert that he is the assignee of a special partnership, then the assignment is void under Section 3460 of the Revised Statutes of Texas. If he claim as assignee of a general partnership, he is confronted with these difficulties, *first*, that only one of the partners executed the assignment, the other being enrolled as a creditor to a large amount, and *secondly*, that the rulings of the Court proceeded upon the theory that the partnership was special, not general, and cannot be sustained, if the conclusion be reached that this was really a general partnership.

## II.

### Illegality of the Assignment.

This question was presented by the general demurrer. The assignment is incorporated into the petition, and is upon its face illegal. The demurrer should have been sustained, on the ground that the plaintiff counted on an assignment, which was expressly forbidden by the laws of the State of Texas.

The recital of the assignment is in these words: (fol. 7).

"Whereas the firm of W. T. Tuffly, composed of W. T. Tuffly, the general partner, and C. E. McLin, as special partner, finding it impossible to pay its debts as they mature, and being desirous to have a distribution of all the property of said firm and the property of the said W. T. Tuffly, partnership—individual, and wishing to avail himself of the provisions of the general assignment law in such cases made and provided."

This recital is an admission of the insolvency of the firm of W. T. Tuffly.

In *Toof vs. Martin*, 13 Wallace, the first item of the syllabus is:

"By insolvency, as used in the bankrupt act when applied to traders and merchants, is meant inability of a party to pay his debts, as they become due, in the ordinary course of business."

At page 47, Mr. Justice FIELD, for the whole Court, except Mr. Justice BRADLEY, who was absent when the case was argued and took no part in the decision, says (italics mine):

"The term insolvency is not always used in the same sense. It is sometimes used to denote the insufficiency of the entire property and assets of an individual to

pay his debts. This is its general and popular meaning. But it is also used in a more restricted sense, to express the inability of a party to pay his debts as they become due in the ordinary course of business. *It is in this latter sense that the term is used when traders and merchants are said to be insolvent*, and as applied to them it is the sense intended by the Act of Congress. It was of the bankrupts as traders that the District Judge was speaking when he used the language which is the subject of criticism by counsel.

With reference to other persons not engaged in trade or commerce the term may perhaps have a less restricted meaning."

In *Buchanan vs. Smith*, 16 Wallace, 277, it was held that a creditor has reasonable cause to believe his debtor "insolvent" in the sense of the Bankrupt Act when such facts are brought to his knowledge as would lead a prudent business man to the conclusion that he, the debtor, is unable to meet his obligations as they mature in the ordinary course of business (*syllabus*).

Mr. Justice CLIFFORD reported the opinion of the whole Court (except Mr. Justice BRADLEY, who dissented on a proposition not material to the case under discussion, and DAVIS, who did not sit), on page 308 says:

"Insolvency, in the sense of the Bankrupt Act means that the party whose business affairs are in question is unable to pay his debts as they become due in the ordinary course of his daily transactions, and a creditor may be said to have reasonable cause to believe his debtor to be insolvent when such a state of facts is brought to his notice respecting the affairs and pecuniary condition of his debtor, in a case like the present, as would lead a prudent business man to the conclusion that he, the debtor, is unable to meet his obligations as they mature in the ordinary course of business."

It is manifest, in the light of these decisions, that a

limited partnership formed under the Revised Statutes of Texas, which is found unable to meet its obligations as they mature, is insolvent within the meaning of the word as used in the same act.

Article 3442 provides that,

"Limited partnership for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons upon the terms with the rights and powers, and subject to the conditions and liabilities herein prescribed."

Irrespective of the fact that the petition (fol. 10) shows that the partnership of W. T. Tuffly was the holder of a stock of

"goods, wares and merchandise,"

and owner of

"furniture, shelves, counters and stationery in said store,"

and that the action was brought for damages caused by the alleged unlawful seizure by the United States Marshal, of all of (fol. 10)

"said stock of goods, wares and merchandise belonging to said firm of W. T. Tuffly, situated in the Burns Building in the City of Houston,"

it is manifest that the firm of W. T. Tuffly was a trading partnership, and, as such, "insolvent" whenever unable to meet its obligations as they might mature.

Section 3460 of the Revised Statutes of Texas is in these words:

"Section 3460. Every sale, assignment or transfer of any property or effects of the partnership made by such partner when insolvent or in contemplation of insolvency or after or in contemplation of insolvency of any partner with the intent of giving a preference to any

creditor of such partnership or insolvent partner over the other creditors of such partnership, and every judgment confessed, lien created or security given by any such partnership under the like circumstances and with like intent shall be void as against the creditors of such partnership."

It is manifest that this assignment was made by an insolvent partnership for the express purpose, as it recites, of giving a preference to part of the creditors of such partnership over others. This is shown by the following portion of the assignment (fol. 8):

"This assignment is intended for the benefit of all such of my creditors only as will consent to accept their proportional share of said property and estate so hereby conveyed and discharge me as aforesaid from their respective claims."

We find here, therefore, a direct violation of the law of Texas, an insolvent special partnership making an assignment for the benefit of such of its creditors "*only*" as will take their share and release the assignor. Thus creditors who were not content to release the assignor are excluded from the benefits of the assignment.

It is to be added that Section 3460 is part of Title 68 of the Revised Statutes of Texas entitled "Partnerships Limited," embracing Sections 3442 to 3464 inclusive, and containing a general scheme for the making, conduct and dissolution of limited partnerships only. It is the re-enactment of a law of Texas, originally adopted May 12, 1846, copied into the Revised Statutes without any substantial, perhaps without any, change.

The suggestion by which this argument is met, is that Article 3460 is part of an ancient law of Texas originally adopted in 1846, re-enacted on the 21st of

February, 1879, which became law on July 24, 1879, in pursuance of Article 3, Section 39 of the, Constitution of Texas, which provides that all statutes not specifically providing the date at which they shall go into force shall take effect ninety days after the adjournment of the legislative session, and that another Act of the Legislature of Texas, originally passed March 24, 1879, and by force of the same constitutional provision, took effect on the same day, July 24, 1879, contains a section which has the effect to amend or repeal Article 3460. This section was numbered three in the original Act of March 24, 1879, which is to be found at page 57 of the Laws of 1879, also, on page 5 of the Appendix to the Revised Statutes, edition of 1879. This third section was amended April 7th, 1883, by an act, which is reprinted as Article 65*c* in Sayles, edition, (1888), of the Revised Statutes of Texas, as follows :

"Any debtor desiring to do so, may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate, and discharge him from their respective claims, and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto, and such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors on account of their respective claims, and when paid, they shall execute and deliver to the assignee for the debtor a release therefrom, provided that such debtor shall not be discharged from liabilities to a creditor who does not receive as much as one-third of the amount due, and allowed in his favor as a valid claim against the estate of such debtor."

Messrs. Sayles, in their recent edition of the Revised Statutes of Texas, print this section and also Section 3460, each in its appropriate place, and as a part of its

appropriate context and cognate subject matter, as if both are still in force. That this conclusion of these recent annotators of the laws of Texas is not out of conformity with any decision of the Supreme Court of Texas, and is undoubtedly correct, is shown by the following circumstances :

*First.* Section 3460 constitutes part, as already stated, of a systematic code for the regulation of limited partnerships only, comprised in Sections 3462 to 3464 of the Revised Statutes of Texas. At the time of the adoption of this revision (February 21, 1879,) there was no law of Texas, providing for the regulation and conduct of assignments generally. This defect was supplied by the passage on March 24, 1879, of an act of eighteen sections, containing originally, and as afterwards amended in 1883, but without substantial change, the provision already quoted. There is no difficulty whatever in these provisions standing together; the Act of March 24, 1879, as regulating assignments generally made by individuals and general partnerships, Article 3460 as controlling assignments by limited partnerships. Thus construed, the laws are consistent and coherent, and may well be supposed to have been both in contemplation of the Legislature, the law regulating limited partnerships forbidding assignments except for the equal benefit of all creditors, because the creditors in such case have as their security only the liability of one, viz., the general partner. They have trusted not the general liability of all parties, but the general liability of the general partner, and the fund contributed by the special partner, and in case they lose the fund, have only recourse to the liability of the general partner.

This made a reason why the Legislature of Texas, as

early as 1846, provided that such partnerships should make no assignment except for the equal benefit of all creditors, and a reason why the general assignment law of Texas, which permits the assignor to dictate to his creditors that they shall release him from liability or reap no benefit from the assigned property, should not apply to assignments made by limited partnerships.

It may or may not be reasonable and just to require the creditors of an individual or of a general commercial partnership, for whose benefit an assignment has been made, to elect between taking the benefits of the assignment with release of debtor, or retaining the liability of the debtor and giving up all claim upon the assigned fund. Clearly, this would not be just where no such choice is given to the creditor. To render this fair to the creditor, he must have the right to elect between the two resources, either to take his share in the fund, or to hold the liability of the debtor. In case of a limited partnership he has no such alternative, for, in the *first* place, he originally trusted, so far as the special partner is concerned, only the fund. He never has had and cannot retain the liability of the special partner. His alternative is not between a share in the fund and retaining the liability of the partners, but between a share in the fund which has already been pledged to him, and retaining the liability, not of the partners, but of the general partner only. For this reason it may well be supposed that when the Legislature of Texas undertook to pass a general assignment law, they did not provide in express words or otherwise for the case of limited partnership. This had already been done, and, therefore, needed words of express amendment or re-

peal, if it were their intention to make a change. As they did not intend to make a change, they used no such language.

Moreover, the Constitution of Texas, by implication at least, imposed upon the Legislature the duty of specifically amending the Code of Limited Partnership; if such were their purpose. Article III., Section 36 of the State Constitution is in these words:

> "No law shall be revived or amended by reference to its title, but in such case the act revived or the section or sections amended shall be re-enacted and published at length."

Article 3460 does not merely contain a provision forbidding preferential assignments by limited partnerships, but also preferential judgments by confession, liens created or security given in case or contemplation of insolvency. Therefore the assignment code, or Genernl Law of 1879, which regulates assignments generally, connot be said to repeal Article 3460, for it contains nothing in conflict with the latter part of the article. Its effect, if any, must be by way of amendment, and while, in a technical sense, it may be said that the amendatory article is contained in the Third Section of the Act of 1879, and that this act therefore is not open to the constitutional objection, because it does not purport to amend by title, nevertheless this suggestion sticks in the bark only. It does attempt to amend, if it amend at all, by implication only, without re-enacting and publishing the section amended at length. The spirit of the Constitution is invaded, if not its letter.

*Secondly.* The Act of March 24, 1879, contains no repealing clause. It is true it was passed on the 24th of March, 1879, while the Revised Statutes were re-enacted on the 21st of February, 1879, but, as there are no repealing words in it of any kind, shape or form whatever, the repeal of Section 3460 is, if it be such, by implication only. But repeals by implications are not favored.

*Harford vs. United States*, 8 Cranch, 109.
*Wood vs. United States*, 16 Peters, 342, 362.
*McCool vs. Smith*, 1 Black, 459.
*Ex parte Yerger*, 8 Wallace, 85, 105.
*State vs. Stoll*, 17 Wallace, 425, 430.
*Arthur vs. Homer*, 96 U. S., 137, 140.
*Ex parte Crow Dog*, 109 U. S., 556, 570.
*Chew Heong vs. United States*, 112 U. S., 536, 550.

*Thirdly.* Both laws took effect *eo instanti*, so that the Act of March 24 could not have the effect to repeal the Act of February 21 of the same year. Both laws went into force on the 24th day of July. On that day, at the same moment, they became laws of the State of Texas. The law, enacting the Revised Statutes, which took effect on the 24th day of July, may be found at the beginning of all the editions of the Revised Statutes of Texas, prefacing those statutes in these words:

"Whereas, it is expedient that the General Civil Statutes of this State should be arranged in appropriate titles, chapters and articles, that the omissions and defects therein should be supplied and remedied, and that the whole should, as far as practicable, be made concise and intelligible. Therefore,

SECTION 1. Be it enacted, by the Legislature of the State of Texas, that the following titles, chapters and

articles shall hereafter constitute the Revised Statutes of the State of Texas. * * *
Article 3460 " (already quoted).

This mandate of the State of Texas, taking effect, and therefore speaking legislatively, not from the date when it was passed by the Legislature, but from the date when, under the Constitution, it took effect, became law *eo instanti* with the act passed March 24, 1879. The two therefore are not in conflict, cannot be in conflict. Each is in force according to the fitness of its subject matter: one as regulating limited partnerships only; the other as applicable to assignments made by individuals, commercial partnerships and corporations.

*Fourthly.* This act, which adopted the Revised Statutes, provided that they should take effect and become law, on September 1st, 1879 (see Code of 1879, page 720, Section 22 of " Final Title General Provisions "). The same provision will be found in 2 Sayles' Civil Statutes, bottom page 673. Therefore, if the two provisions of law now under consideration be in conflict, the Revised Statutes, taking effect September 1, had the necessary effect to repeal the inconsistent portion of the general assignment law which took effect the previous July 24.

These dates of statutes confirm the argument, which, I think, however, rests securely upon the proposition that the two statutes are, in substance, independent of each other, relating to different subject matters, and are not in any necessary conflict whatever, and there being no repealing clause in the Act of March 24, each is to be preserved and maintained upon the principle of distribution; that is to say, each as appropriated and

applied to its proper subject matter. This done, it will be found, as the recent annotators of the laws of Texas evidently think, that limited partnerships in Texas have no power to make assignments with preferences, and that this assignment therefore was void and not the basis of an action, and being incorporated into the petition, the defendants were entitled to the dismissal of the action upon their general demurrer.

## III.

**But if otherwise, and this were a general partnership, W. T. Tuffly had no authority to make this assignment.**

His sister, Mrs. Christine E. McLin, is not shown to have been absent or incapable of action, and the assignment itself, being an act out of the common course, not one for which the firm was formed, was not within the implied powers granted to Tuffly, as it certainly was not within the express powers which the articles of copartnership confer. The articles of copartnership (fol. 64) state :

"The general nature of the business intended to be transacted is a general retail, and wholesale, if they see proper, fancy and staple dry goods and notion establishment, in the City of Houston, Texas * * * The said partnership is to be commenced on the 16th day of April, 1884, and continue for the space of two years, to end on the 16th day of April, 1886."

That the rule for which we contend is recognized in Texas is shown by the case of *Moore vs Steele*, 67

Texas, 435, where it is held that the partner's interest is only in the surplus after payment of firm debts, and that a sale by one partner of his interest is a dissolution of the firm, but Tuffly could not dissolve this firm before April 16, 1886, by the express terms of the agreement of partnership, so that he could not sell his interest, and he had no authority from his copartner to assign hers to his brother Louis Tuffly for the benefit of creditors. In *Fore vs. Hitson*, 70 Texas, 517, it is held that acts out of the course of the business of the copartnership, such as the execution of a bond, or contract of suretyship, by one partner, are not binding on the firm. This recognizes the general principle that a partner's power is confined to carrying on the business as a going concern; that one partner may not execute a general assignment for the benefit of creditors, without the consent of his copartners, at least where such copartners are accessible, and their consent may be asked and had. This is shown by

Bishop on Insolvent Debtors, 121.

1 Bates on Partnership, § 338, and cases cited in note 1.

1 Lindley on Partnership (Rapalje's Ed.), *page 129, and cases cited in note 9.

*In the Matter of Lawrence et al.*, 5 Fed. Rep., 349.

*Bank vs. Carrollton Railroad*, 11 Wall., 624.

In another note to § 338 of the excellent work on Partnership by Judge Clement Bates, the author refers to his earlier treatise on Limited Partnership, pp. 189–192, where the authorities are collected upon

the question, which is said to be "very doubtful," whether

"the general partner even of a limited partnership can make an assignment without the assent of a special partner."

This proposition was presented to the Circuit Court by the first special demurrer, which was overruled.

## IV.

### The assignment did not purport to convey the firm property or the individual property of Mrs. McLin.

Its language is (fol. 170):

"I, W. T. Tuffly hereby assign and convey and deliver possession of all and singular my property and effects of whatever name and nature, both personal and real, which I own as a copartner and individually, and intended to include all property of which or in which I have any interest whatever wherever the same may be, to Louis Tuffly, as assignee for the purposes aforesaid, taking possession of the same and sell the same, collect and convert the same, and when so sold, collected and converted, to appropriate the same ratably or in full payment, as the case may be, of all my debts and the debts of the firm of W. T. Tuffly, said assignee to proceed under the law aforesaid."

Then follows the provision limiting the benefit of the assignment to those creditors who consent to receive their share of the proceeds of the assigned property, and release the debtor. Such assignment, made by an ordinary commercial partnership, and not including all

the property of the assignors, both firm and individual, was held by the Supreme Court of Texas, to be void in *Donoho vs. Fish*, 58 Texas, 164. See also *Coffin vs. Douglass*, 61 Texas, 406.

In *Donoho vs. Fish* it was held that, in order to be valid, an assignment must convey all property of the debtor, real and personal, partnership and individual. That if it convey only partnership property with condition of release title does not pass. The author of this assignment knew well the difference between a firm and an individual, and although the assignment recites (fol. 170) that the firm is

> " desirous to have a distribution of all the property of the said firm and the property of the said W. T. Tuffly, partnership and individual,"

nevertheless the grant was not in the name of the firm W. T. Tuffly, but of the individual W. T. Tuffly, and was not of the firm property, but of—

> " my property and effects * * * which I own as copartner and individually, and intended to include all property of which or in which I have any interest whatever."

In other words, the firm made no assignment, but Tuffly, the individual, assigned his interest in the firm property and in the individual property. But his interest in the firm property was only in the surplus after payment of the debts of the firm *(Moore vs. Steele*, 67 Texas, 435), so that this assignment was not really made by the firm Tuffly, but by the individual Tuffly, and did not estop or exclude the claim of the firm or of the firm's creditors.

Mrs. McLin made no assignment of her individual

property. This property is still retained by her. At folio 155 of the Record, it is shown that :

" There was also proof tending to show that Christine E. McLin owned property over and above that exempt by law from execution March 23, 1885, in her individual right, and the proof showed that she did not join in the deed of assignment, nor convey to the assignee, Louis Tuffly, her individual property."

Of course if this were a lawful assignment by a limited partnership, she was not bound to assign, but it could not become a lawful assignment by general partners, as shown by the cases already cited, except upon condition, not only that she should unite in the assignment, but convey her non-exempt property to the assignee.

These propositions were presented to the Circuit Judge by the second special demurrer, which he overruled.

## V.

### Invalidity of the special partnership under the laws of Texas.

This question was presented to the Court both by the special demurrers and the instructions asked.

Article 3442 of the Revised Statutes of Texas requires the special partner's contribution to be—

" in actual cash payments."

In this case this was manifestly not complied with. The contribution of Mrs. McLin was simply of the amount which her deceased husband had owned in the

copartnership. Even then its amount was inaccurately stated in the articles of copartnership, because of the mistake to which the attention of the Court has already been called in the statement of facts. It was stated as $6,419.36, whereas it was in fact less. The whole amount of cash on hand is shown, by the trial balance, to have been only $1,803.24 (fol. 147). The Court were requested to charge upon this subject, but refused to give the charge, and the defendants excepted. This charge is long, but it includes nothing which breaks its force or would justify the claim that any part of it might be properly refused because too extensive, and not merely limited to the point now in question (fols 277–280).

"It is claimed by the plaintiff, Louis Tuffly, that the copartnership or the firm of W. T. Tuffly was a limited partnership composed of W. T. Tuffly as general partner, and Christine E. McLin as special partner. It is claimed by defendants that Tuffly and said Christine E. McLin were both general partners, and that said Christine E. McLin was a general and not a special partner, for the reason, among others alleged by them, that she did not comply with the requirements of the law governing limited partnerships.

On this question you are instructed that limited partnerships may consist of one or more persons who shall be called the general partners, and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners. They are also required to make and severally sign a certificate, which, among other things, shall contain the amount of capital which each special partner shall have contributed to the common stock.

This certificate, after having been acknowledged by the parties in the same manner as conveyances of land are acknowledged, shall be filed in the office of the Clerk of the County Court of the county in which the principal place of business of the partnership shall be

situated. At or before the time of filing this certificate the sum specified in the certificate to have been contributed by the special partner in the common stock must have been actually and in good faith paid in cash; and if this is not so actually and in good faith paid in cash at or before said filing, then all persons interested in such partnership shall be liable for all the engagements thereof as general partners, and no payment into the fund thereafter by the special partner can relieve him from the consequences of failure to pay within the time above specified; so also the sum to be contributed by the special partner must have been actually and in good faith paid in cash, and cannot be contributed in property of any kind, however valuable it may be. If the proof shows you that Mrs. McLin's deceased husband, R. W. McLin, has a net interest, at or about the time of his death, in the firm of W. R. McLin & Co., and that, in consideration of the arrangement by W. T. Tuffly for full settlement of all claims against the said firm of R. W. McLin & Co. and the obtaining of a release of the estate of R. W. McLin from liability on account of the same, assigned and transferred to W. T. Tuffly all the goods, wares, and merchandise and other properties of said firm, and that the interest so conveyed constituted her contribution to the common stock to make her a special partner, then you are instructed that this would not be such contribution of actual cash as the law requires or contemplates, no matter what the outward form of the transaction was, and in such case Mrs. McLin would have thereupon become a general partner and liable as such, and no advance, loan, or payment thereafter made by her to W. T. Tuffly or to the firm would change her status from that of a general partner, and if you so find, then you are instructed that it was essential to the validity of the assignment that she should have joined in it and conveyed to the assignee her individual property not exempt, and that as she did not do so the assignment would be illegal and void, and that your verdict should be for the defendants."

The last sentence of this charge is justified and required by *Donoho vs. Fish*, 58 Texas, 164, *Coffin vs. Douglas*, 61 Texas, 406, and *Shoe Company vs. Ferrell*,

68 Texas, 638. In *Donoho vs. Fish*, it was held that a general assignment for the benefit of creditors to be valid must convey all property of the debtors, real and personal, partnership and individual. If it convey only partnership property with condition of release, it conveys no title. In *Coffin vs. Douglas*, it was held that an assignment by a mercantile copartnership is void, which does not include all assets, partnership and individual, and in *Shoe Company vs. Ferrall*, it was held that an assignment for the benefit of creditors by a (general, not limited) partnership, is good, although it require releases by creditors, if it include all the property of the partners, partnership and individual.

## VI.

**Unlawful preferences created by this assignment.**

These render the assignment void. They are two in number. *First*, the assignment schedules Mrs. McLin as a creditor, as follows :

" Mrs. C. E. McLin $7,798 notes, borrowed money."

This inventory attached to the assignment is sworn to by Tuffly as—

" In all respects just and true, according to his best knowledge and belief " (fol. 173).

Article 3463 of the Texas Code is as follows:

" In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circum-

stances, be allowed to claim as creditor until the claims of all other creditors of the parties shall be satisfied."

Notwithstanding this provision, Mrs. McLin, under the preference given, by including her in the inventory attached to the assignment, and which is referred to in the body of the assignment in these words (fol. 170):

"Schedules are hereto attached and are made as particular as I can do at this time, in but any particular where they may be incorrect or insufficient in detail they will be corrected by me."

presented her claim to Louis Tuffly, the assignee who refused to allow it, and thereupon she brought suit in the District Court of Harris County, Texas, and (fol. 154)

"a decree of that Court was given in her favor for the full amount of said claim and interest, to wit, $8,509.04, and established the same as a claim against the estate of W. T. Tuffly in the hands of said Louis Tuffly; * * * none of the parties defendant in this action were parties to that decree."

This proposition was presented to the Court upon introduction in evidence of the deed of assignment, and is the basis of the *seventh* assignment of errors.

*Secondly.* The assignment (fol. 170) contains the following provision, following the words which grant all the property, partnership and individual, in which the assignor is interested—

"to Louis Tuffly as assignee for the purposes aforesaid."

These purposos are stated to be

"a distribution of all the property of said firm and the property of the said W. T. Tuffly, partnership and individual."

The assignment proceeds:

"Taking possession of the same and sell the same, collect and convert the same, and, when so sold, collected, and converted, to appropriate the same ratably or in full payment, as the same may be, of all my debts and the debts of the firm of W. T. Tuffly."

This, if treated as an assignment by the special partnership and the individual jointly, is a conveyance which makes hotch-potch of the partnership and individual property, and appropriates them ratably to the partnership and individual creditors, contrary to law. For the partnership property is at law in case of insolvency of the firm to be applied only to the benefit of partnership creditors, and individual creditors have no claim upon it or right to share in its proceeds until the partnership creditors have been fully paid. What Tuffly could not lawfully do before insolvency, viz., apply the partnership property to pay his private debts, he cannot successfully attempt in case of insolvency.

Such attempt is void. If successful it would establish preference of the individual creditors. But this would render the whole assignment void. This proposition was presented to the Circuit Court by the *fifth* special demurrer, to which the *sixth* assignment of errors applies.

In *Converse vs. McKee*, 14 Texas, 20, the priority of the claim of partnership creditors to partnership assets, is said to be

"too well settled to be now questioned."

See also

*Rogers vs. Nichols*, 20 Texas, 719.
*Warren vs. Wallis*, 38 Texas, 225.
*De Forest vs. Miller*, 42 Texas, 34.

The only exception to the rule is where there is enough to pay all.

*De Caussy vs. Baily*, 57 Texas, 665.

## VII.

**The pretended capital of the special partnership was reduced in amount contrary to law.**

It is claimed that Mrs. McLin contributed $6,419.36 to the capital of this partnership. In point of fact, it has already been shown that this sum should be reduced—

"as some $400 or $500 of liabilities were omitted which would have made the net interest of R. W. McLin less, by one-half of said omitted liabilities, than it was estimated to be,"—

in the trial balance (fol. 149). It further appears that, after the trial balance was made, April 1, 1884, and before the so-called limited partnership was created, she drew out of her capital $314.30 of actual cash, so that, at the time of the formation of the pretended limited partnership the real amount to the credit of her capital account was not $6,419.36, but that sum less $314.30, equal to $6,105.06, less half of the $400 or $500 liabilities just mentioned. This was contributed, not in cash, but in assets of uncertain value. It is shown in the evidence that she also withdrew moneys and merchandise from time to time until at the time of the failure she had in the firm only $3,636.56; the assets and

sums she thus withdrew and which so reduced her capital account were debited to it by the bookkeeper An attempt was made to show that this was the bookkeeper's own work, not hers; that she was a creditor of the firm by loans, and that the sums thus withdrawn were proper credits against her claim as a creditor, and not chargeable to capital account. This would answer well enough but for two fatal circumstances: *First*, her first loan to the firm was May 20, 1884, in the sum of $1,100 (fol. 152), but, before that day, her capital had been reduced by the sum of $1,002.52, viz., to the sum of $5,416.84 (fol. 150). This sum of $1,002.52 includes the $314.30 which she had drawn in cash as aforesaid, and which was never returned to the partnership, the residue being merchandise bought by her from the store, and charged to her capital account. It is manifest that a loan made by her after these purchases, for which promissory notes of Tuffly payable in future (fol. 151) were given, was not a set-off against the $1,002.52 drawn by her, partly in cash and partly in merchandise, and that the bookkeeper, therefore, made no mistake in charging this sum to her capital account. In the *second* place, however, it was shown that (fol. 154,)—

"after the assignment Mrs. McLin presented her claim to the assignee, Louis Tuffly, for said borrowed money, and that he refused to allow the same; that thereupon she brought suit against him in the District Court of Harris County, Texas, and that a decree of that Court was given in her favor for the full amount of said claim and interest, to wit: $8,509.04, and established the same as a claim against the estate of W. T. Tuffly in the hands of said Louis Tuffly. That no credit or allowance was made in said judgment for the interest paid on said notes, as above set forth, or for moneys and goods drawn by Mrs. McLin from the store and business of W. T. Tuffly."

That this state of facts was fatal to her claim is shown by Articles 3453 and 3456 of the Revised Statutes of Texas.

"Art. 3453. Every alteration which shall be made in the names of the partners, in the nature of the business or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last article."

"Art. 3456. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the character of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profit shall remain to be divided he may also receive his portion of such profits."

## VIII.

**The pretended limited partnership was not perfected by publication in accordance with law.**

This is manifest from a comparison of the statute with the steps actually taken by the partners. The agreement of copartnership as registered (fol. 64), states the nature of the business as

"a general retail, and wholesale, if they see proper,

fancy and staple dry goods and notion establishment in the city of Houston, Texas."

Article 3445 of the Revised Statutes of Texas requires the

" persons desirous of forming such partnership,"

to

" sign a certificate which shall contain * * * (2) the general nature of the business intended to be transacted."

This certificate must be registered in the Office of the County Clerk of the County, which was done in this case, on March 23, 1885 (fol. 71).

Article 3450 is in these words :

The partners shall publish the terms of the partnership when registered, for at least six weeks immediately after such registry, in such newspapers as shall be designated by the Clerk, in whose offices such registry shall be made, and, if such publication be not made, the partnership shall be deemed general."

The publication was made in these words (fol.. 73) :

" HOUSTON, April 25, 1884.

The undersigned give notice that they have formed a copartnership under the firm name of W. T. Tuffly, having the following terms as will appear by their executed and recorded certificate.

W. T. Tuffly is a general partner, Mrs. Christine E. McLin is the special partner, and has contributed to the common stock the sum of $6,419.36.

W. T. TUFFLY.
CHRISTINE E. MCLIN."

This advertisement, containing no statement of the nature of the business to be conducted, is so manifestly not in accordance with the law of Texas, and so clearly prevented the agreement of limited partnership from

taking effect except as a general partnership, that it is not surprising it was not met on the trial below, except by the attempt to fix an estoppel on the plaintiffs in error whose recognition of the firm as a limited partnership was supposed by the Circuit Court to prevent an investigation into its actual legal defects.

But, in the *first* place, it was not shown, or offered to be proved on the trial of the case in the Circuit Court, that the defects of this partnership organization were known to the attaching creditors.

*Secondly.* The agreement of the creditors of the firm of R. W. McLin & Co. cannot estop the attaching creditors from showing that the limited partnership therein recognised as having been created by a certificate failed to become such by proper publication. The certificate of limited partnership was executed April 24, 1884, and filed for registration in the County Clerk's Office the next day. Had it never been filed for registration the existence of the limited partnership would have been defeated. The Revised Statutes of Texas (Article 3447) require that:

" The certificate so acknowledged and certified shall be filed in the office of the Clerk of the County Court, * * * and shall also be recorded by him." * * *

They also require (Article 3448) that:

" At the time of filing the original certificate * * * an affidavit of one or more of the general partners shall also be filed, * * * stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid in cash."

Also (Article 3449) that:

"No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed, and if any false statement be made in such certificate or affidavit all the persons interested in such partnership shall be liable for all the engagements thereof as general partners."

Also (Article 3450) that:

"The partners shall publish the terms of the partnership or registry for at least six weeks immediately after such registry in such newspapers as shall be designated by the clerk in whose office such registry shall be made, and if such publication be not made the partnership shall be deemed general."

The provisions are conclusive that the recital contained in the release of the 24th of March, 1884, by the attaching creditors and others, that:

"in consideration of the assumption of all the indebtedness of said late firm by the firm of W. T. Tuffly, composed of W. T. Tuffly, general, and Christine E. McLin, special partner, as appears by the certificate by them signed,"

does not estop the signers thereof from averring nonconformity with the law of Texas, occurring, and which the parties all knew must occur, if at all, at a later date. Every one of these parties knew when McLin died, and when every transaction shown in evidence in this case occurred. Every one of them knew that the advertisement was required, but could not be made until long after the date of this release. The consequence is that the charge of the Circuit Court excepted to, as shown by the *eighteenth* assignment of error constitutes a fatal error requiring a reversal of the case. I repeat the language of this charge in order that there may be

no mistake. It is shown (fol. 162), that the defendants asked the Court to instruct the jury—

" as a separate and distinct charge from all others,"

that

" the instrument offered in evidence by plaintiff, bearing date the 24th day of April, 1884, and signed by Morrison, Herriman & Co., Dunham, Buckley & Co., Wm. H. Lyon & Co., and other creditors of the firm of R. W. McLin & Co., through their agent, Andrew Wilson, is only a release of the estate of R. W. McLin, deceased, from all liability on account of their respective claims. The recitation in it, that said claims had been assumed by the firm of W. T. Tuffly, composed of W. T. Tuffly as general and Christine E. McLin as special partner, as appeared by their partnership certificate by them signed, does not preclude or estop the defendants in this case from showing that such limited partnership was never in fact formed, or that by reason of violation of the law it was afterward converted into a general partnership.

But the Court refused said charge and refused to so charge the jury as prayed by defendants, and gave no other instruction to the jury relative thereto than as hereinbefore set forth; to which ruling of the Court in refusing said charge and in refusing to instruct the jury as above prayed, or to give any other instruction in relation thereto than as hereinbefore set forth, the defendants, by their counsel, then and there excepted before the jury retired from the bar."

In the *third* place the mandate of the law of Texas is, specifically, that—

" If such publication be not made the partnership shall be deemed general."

This is *law*. It does not depend for its validity upon contractual relations and obligations. It is *law*, and I respectfully submit that it is not competent to overthrow this law, by showing that the parties, at an

earlier date, acted upon the theory that the requirement of the statute would be complied with.

*Fourthly.* The Circuit Court was asked to charge the jury—

"As a separate and distinct charge from all others, as follows, to wit (fols. 164, 165):

"If by reason of failure to comply with the law in the first instance, or by reason of violation of the law after the partnership was formed, the alleged limited partnership became a general partnership, then it so continued under the law and facts of this case; and if you find, under this and other instructions, that it was a general partnership at the date of the alleged assignment, March 23, 1885, then you are charged that said alleged assignment was illegal and void because of the failure of Mrs. McLin to join in it or to convey her individual property to the assignee, and in that event your verdict should be for the defendants.

But the Court refused said charge and refused to so charge the jury as prayed by defendants, and gave no other instruction to the jury relative thereto than as hereinbefore set forth; to which ruling of the Court in refusing said charge and in refusing to instruct the jury as above prayed, or to give any other instruction relative thereto than as hereinbefore set forth, the defendants, by their counsel, then and there excepted before the jury retired from the bar."

The latter part of this charge is required by the case of *Donoho vs. Fish*, 58 Texas, 164.

It seems to me that, for the reasons above given, there is no doubt that the partnership never became a lawful limited partnership. It could not be true that selling goods to W. T. Tuffly, or to Christine E. McLin and W. T. Tuffly doing business under the name of W. T. Tuffly, estops the creditor from showing that they were general partners, nor does it seem to me that the fact

that the creditors took judgment against W. T. Tuffly individually creates any estoppel applicable to the present case. The plaintiff in this case must stand on his own title to the assigned goods. If he had no title, he must fail, for the action of the defendants cannot make one. If there were no limited partnership originally, surely no estoppel grows out of the fact that goods were sold by Morrison, Herriman & Co. to W. T. Tuffly, or that they took judgment against W. T. Tuffly. Neither of these facts involves an affirmation that Christine E. McLin was not a general partner with W. T. Tuffly in the stock of goods assigned, or that the "W. T. Tuffly" buying or sued was the name of a limited partnership only. Therefore, neither involves any estoppel against their affirming that there was no limited partnership. As I understand the law, the rule is that where by word, act or conduct one induces another to change his position disadvantageously, the latter may claim the benefit of estoppel. Before the estoppel can take effect the facts and circumstances must be known to the person alleged to be estopped, and the word, act or conduct itself, which is the foundation of the estoppel, must also relate to a present, not a future, state of facts. A promissory estoppel cannot exist. By selling goods to Tuffly, by charging Tuffly, the attaching creditors create no estoppel, unless at the same time they sell to or charge Tuffly in such way as to exempt Mrs. McLin, but this they did not do. They simply charged Tuffiy, using no language of release or discharge of Mrs. McLin. By taking judgment against Tuffly, they might be claimed to have absolved Mrs. McLin from the debt, and to have created an estoppel between themselves and Tuffly

to the effect that the debts were due by him. This might be argued with plausibility, if not cogency, but by taking judgment against Tuffly alone, they, in no wise, affirmed that Tuffly had not been in partnership with Mrs. McLin in the property which was the snbject of assignment. They might thus have released Mrs. McLin from all liability to them as a general partner or joint debtor, and yet have averred, without any inconsistency or conflict of thought or assertion, that Louis Tuffly took no title from W. T. Tuffly and Christine E. McLin. The objection, if there be any, founded on the fact that they have taken judgment against W. T. Tuffly, must be asserted in the Court which distributed the proceeds of that judgment.

Again, if this were a general partnership in the beginning, it certainly so continued, unless by some affirmation, that it was not a general partnership, the attaching creditors estopped themselves from averring as against Louis Tuffly that it was a general partnership. Estoppels are mutual, and Louis Tuffly was no party to this estoppel, if there were such, and not being bound by any such estoppel himself, he is not entitled to claim its benefit. When the property was sold under the orders of the Circuit Court, to pay their judgments, title passed as against the judgment plaintiffs and defendant, not against Christine E. McLin and Louis Tuffly, who were not parties to the cases. Whoever bought the property bought it under the rule *caveat emptor*, and if the attaching creditors have succeeded in making their money out of the sale of W. T. Tuffly's interest in firm goods, they have been fortunate, for they have given no warranty, and the purchasers, having bought under this rule, must make

their own fight to sustain their own title. The elements of estoppel, which should prevent these attaching creditors from contending that this was no limited partnership at least by events which occurred after their release of R. W. McLin & Co. are wholly wanting, and, therefore, the charge of the Circuit Court was contrary to the law and there should now be a reversal for this reason, if for no other.

Respectfully submitted,

GEO. HOADLY,
Of Counsel, with
FRANK S. BURKE,
For Plaintiffs in Error.

November 19, 1889.

Office Supreme Court U. S.
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# In the Supreme Court of the United States.

OCTOBER TERM, 1889.

JAMES G. TRACY and others,
*Plaintiffs in Error,*

vs.

LOUIS TUFFLY, Assignee of W. T. Tuffly,
*Defendant in Error.*

No. 134.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

## Reply to Brief for Defendants in Error.

### I.

Assuming that the provision cited by Mr. Oliver from Section 20 of the final Title of the Act, enacting the Revised Statutes of Texas, establishes the legal superiority of the Act of March 24, 1879, over any provision of the Revised Statutes "in conflict" therewith, I respectfully repeat that the proposition of my original brief (page 39) is unshaken, viz.:

"that the two statutes are in substance independent of

each other, relate to different subject matters, and are not in any necessary conflict whatever."

I think this will be more apparent, if possible, than it was made by my original brief, by close attention to Section 3 of the Act of March 24, 1879, as amended in 1883, which is supposed to be "in conflict" with Article 3460 of the Revised Statutes. Its full text is this (65*c* of Sayles' Ed. of Revised Statutes).

"Section 3. Any debtor desiring so to do may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate and discharge him from their respective claims, and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto, and such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors on account of their respective claims, and when paid they shall execute and deliver to the assignee, for the debtor, a release therefrom; *provided* that such debtor shall not be discharged from liabilities to a creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor.

A careful examination of this section discloses the purpose of the Legislature of Texas to restrict the right of the debtor to dictate to his creditors, that they must elect between taking their share of the assigned property, or releasing him, to such debtors only as have the right to control the property so assigned, and would remain liable in case of election not to take the property. *First*, the assignment is to be made by the "debtor." This provision has no relation to an assignment made by the general partner of a limited partnership. Both partners are here debtors. Only one assigns. It is true that there is no personal liability of the limited or special partner

beyond his or her contribution to the capital fund, (Art. 3443), nevertheless, in a moral and legal point of view, the special partner is debtor. In law, he is not liable, "for the debts of the partnership, beyond the fund," but is liable, by force of this very language, to that extent. *Secondly*, it must be for the benefit of those creditors, who take benefits from the assignment, not of creditors already entitled, as in the case of limited partnership, to a share in the fund.

*Thirdly.* This restricted assignment is for the benefit of such creditors (fol. 67),

"as will consent to accept their proportional share of said property and estate,"

but, in the case at bar they are required to accept not only a proportional share of his estate, if Tuffly be treated as the debtor, but of Mrs. McLin's estate, viz.: the property she contributed to the limited partnership property already subject to their claims.

*Fourthly.* The assignment in question is restricted to those creditors, who may be willing and able to discharge the debtor from their respective claims. They must have claims from which he can be discharged, but, according to the theory in question, they had no claims on Mrs. McLin, and yet are compelled to give up their share of her capital, releasing it, or to release Tuffly as well as Mrs. McLin. That is to say, releasing Tuffly from the legal claim, and Mrs. McLin from any possibility of holding her as a general partner, and from her duty to maintain her capital in the firm.

*Fifthly.* In such case the benefits of the assignment (Sayles' Ed., 65c) (italics mine):

" shall be limited and restricted to the creditors consenting thereto, and *such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors.*"

How can this apply to Mrs. McLin? If this were a *bona fide* limited partnership, she was not liable to the consenting creditors beyond the amount of her capital (Sayles' Ed., 65c).

*Sixthly.* " And when paid they shall execute and deliver to the assignee for the debtor a release therefrom."

How can this apply to Mrs. McLin? What good would a release do her, in case of a limited partnership?

This proves, plainly enough, that it is only a debtor who may be released, not one already released, or not liable, who may make the restricted assignment in question; that the section has no pertinency or applicability to a limited partnership, where one of the partners needs no release, and the other is not the sole debtor but only the managing partner.

*Seventhly.* The same conclusion is derived from the *proviso*, that the debtor is not discharged from liability to a creditor who does not receive one-third of his claim. How could this apply to Mrs. McLin or to any case of limited partnership?

The effect of the section as construed by my learned adversary, is this: The creditors have trusted a limited partnership, knowing that Mrs. McLin will not be personally liable, beyond the amount of the capital contributed by her in cash, provided she has observed the law of Texas, which regulates her conduct

in the premises, so that she has not become a general partner. Yet, notwithstanding this, and that they have no claim upon her, beyond the capital contributed by her for their security, they must give up their claim on this fund, or release the general partner, and surrender any possibility of making claim against her.

This view of the statute is confirmed by Article 3456:

"No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him;"

And by the portion of Article 3445 requiring the certificate to contain

"5. The period at which the partnership is to commence and the period at which it is to terminate;"

And by Article 3443:

"Such partnerships may consist * * * o fone or more persons who shall contribute in actual cash payments a specified sum as capital of the same stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the funds so contributed by him or them to the capital."

These provisions taken together exempt the special partner from liability for partnership debts beyond the fund contributed by him to the capital (but not otherwise or further), he continuing the capital without impairment during the term of the copartnership, unless, under Article 3460,

"A sale, assignment, or transfer, without preference, be made."

Is it not manifest that this *third* section is not "in conflict" with article 3460, but is part of a general scheme of law relating to individual and ordinary com-

mercial partnerships, where all the debtors are liable, and the creditor has free choice, therefore, whether he will take his share of the assigned fund and release the debtors, or will retain the liability of all the debtors upon giving up his share in the assigned fund?

In *Cleveland vs. Battle*, 68 Tex., 111., it was decided, with reference to Section 3 of the Act of March 24, 1879, that

"Such release can be required only when all the partnership property, as well as the individual property, of the members composing the insolvent firm passes by the deed of assignment."

*Fant vs. Elsbury*, 68 Tex., 1, cited by Mr. Oliver, has no reference to the assignment of a limited partnership. It holds that an attempt to give a preference under Section 3 of the Act of March 24, 1879, does not avoid the assignment, but is itself invalid and void. Article 3460, in express terms, makes the whole assignment void in case of such attempt by a limited partnership.

## II.

At page 53 of my original argument is to be found a quotation from Article 3445 of the Revised Statutes of Texas. In printing this, a portion of the article was omitted, and I, therefore, reproduce all of the article which bears upon the proposition of law submitted in that part of my argument.

Article 3445 of the Revised Statutes of Texas, being part of the Code of Limited Partnership, requires,

"The persons desirous of forming such partnership"

to—

" Sign a certificate which shall contain, * * * 2. The general nature of the business intended to be transacted. 3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners and their respective places of residence. * * * 5. The period at which the partnership is to commence and the period at which it is to terminate."

Article 3450 requires,

" The terms of the partnership "—

to be published, and provides that,

" If such publication be not made the partnership shall be deemed general."

Upon page 53 of my original brief, I have copied in full the publication which was in fact made. It omits all description of or reference to " the terms " of this partnership, except the names of the general and special partners, and the pretended amount contributed by the latter to the firm. It neither states the general nature of the business intended to be transacted, as required by the *second* clause of Article 3445, nor the places of residence of the general and special partners, required by the *third* clause, nor the period of commencement and termination of the partnership required by the *fifth* clause of the article.

## III.

Mr. Oliver is in error in stating (page 21 of his brief) that the—

" plaintiffs in error, attaching creditors herein, sued *the*

*special partner*, W. T. Tuffly, after the assignment had been executed, and attached the assigned property in the hands of the assignee."

For proof of this he refers to the transcript (page 71). Undoubtedly they attached the assigned property in the hands of the assignee, but they certainly did not sue the special partnership, W. T. Tuffly. On the contrary, they sued—

" W. T. Tuffly, merchant, at Houston, Texas."

The assumption that they sued W. T. Tuffly, the special partner, is an assumption that there was a lawful special partnership, and that this case was correctly decided by the Court below, precisely what we dispute and have been trying to overthrow. They sued Tuffly the individual. They served Tuffly the individual with writ. This is just what they did, nothing more nor less.

Respectfully submitted,

GEORGE HOADLY,

With FRANK S. BURKE,

Of Counsel for Plaintiffs in Error.

November 23, 1889.

Supreme Court U. S.
FILED.
NOV 22 1889
JAMES. H. McKENNEY.
CLERK.

IN THE

# Supreme Court of the United States.

**OCTOBER TERM, 1889**

*No. 134.*

JAMES G. TRACY *et al.*, PLAINTIFFS IN ERROR,

*vs.*

LOUIS TUFFLY, ASSIGNEE, DEFENDANT IN ERROR.

## BRIEF AND ARGUMENT FOR THE PLAINTIFF.

W. C. OLIVER,
*Of Counsel for Louis Tuffly, Defendant in Error.*

JUDD & DETWEILER, PRINTERS.

IN THE

# Supreme Court of the United States.

## OCTOBER TERM, 1889

*No. 134.*

JAMES G. TRACY *et al.*, PLAINTIFFS IN ERROR,

*vs.*

LOUIS TUFFLY, ASSIGNEE, DEFENDANT IN ERROR.

### BRIEF AND ARGUMENT FOR THE PLAINTIFF.

The firm of W. T. Tuffly, composed of W. T. Tuffly, general partner, and of Christine E. McLin, special partner, executed a deed of assignment to Louis Tuffly for the benefit of their creditors, under the assignment law enacted by the Legislature of Texas, on the 24th day of July, 1879.

Thereupon Louis Tuffly duly qualified as such assignee by giving bond, &c., as required by law, and went into possession of the property of W. T. Tuffly.

Thereafter certain creditors of W. T. Tuffly filed suit against him in the United States circuit court for the eastern district of Texas and sued out attachments against W. T. Tuffly, and caused same to be levied on assigned goods in the hands of Louis Tuffly, assignee.

This action was brought against the marshal who levied the writ and his bondsmen and indemnifiers to recover for

the benefit of the general creditors the value of the goods so seized.

The deed of assignment under and by virtue of which the defendant in error claims, and the validity of which plaintiffs in error question, is as follows:

"THE STATE OF TEXAS, }
*County of Harris.* }

"Whereas the firm of W. T. Tuffly, composed of W. T. Tuffly, the general partner, and C. E. McLinn, as special partner, finding it impossible to pay its debts as they mature, and being desirous to have a distribution of all the property of said firm and the property of W. T. Tuffly, partnership and individual, and wishing to avail himself of the provisions of the general assignment laws in such cases made and provided: Now, therefore, in consideration of the premises and one dollar to me in hand paid, I, W. T. Tuffly, hereby assign and convey and deliver possession of all and singular my property and effects of whatever name and nature, both personal and real, and which I own as co-partner and individually, and intended to include all property of which or in which I have any interest whatever, wherever the same may be, to Louis Tuffly, as assignee, for the purpose aforesaid, to take possession of the same and sell the same, collect, and convert the same, and, when so sold, collected, and converted, to appropriate the same, ratably or in full payment as the case may be, of all my debts and the debts of the firm of W. T. Tuffly, said assignee to proceed under the laws aforesaid. This assignment is intended for the benefit of all such of my creditors only as will consent to accept their proportional share of said property and estate so hereby conveyed and discharge me, as aforesaid, from their respective claims, said assignee to take lawful compensation for his services herein, and expenses and counsel fees necessary to aid him and enable him to carry out the purposes of this conveyance. Schedules are hereto attached and made as particular as I can do at this time, but in any particular where they may be incorrect or insufficient in detail they will be corrected by me.

"In witness whereof I hereunto set my hand at Houston, this March 23rd, 1885.

"(Signed) W. T. TUFFLY."

The overruling of defendant's exceptions having been assigned as error, we consider them *seriatim*. (See first bill of exceptions, Transcript, p. 29; assignment of errors (2), p. 152.)

The defendant's first exception (assigned as error 2, transcript, p. 152) is that C. E. McLin, the special partner, did not join in the deed of assignment. Plaintiffs answer that it was not necessary that the special partner should so join.

Article 3444 of the Revised Statutes of Texas reads as follows:

"The general partner only shall be authorized to transact business and sign for the partnership and to bind the same."

Article 3455 also provides that suits in relation to the partnership may be brought and conducted by and against the general partner in the same manner as if there were no special partners.

Article 3443 provides in relation to special partnerships:

"Such partnerships may consist of one or more persons, who shall be called the general partners and who shall be jointly and severally responsible as general partners now are by law; and one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the sum so contributed by them or him to the capital."

It therefore appears that the general partners are charged by law with the entire management of all such partnerships and with the express powers to sign for the partnership.

But, independent of the statute, which in cases of special partnerships expressly authorize the general partner to transact the business of and sign for the firm, even in cases of ordinary partnerships, the Supreme Court held in the case of Schneider *vs.* Sansom, 62 Tex., 201, that one partner

could sell the entire stock of goods for the purpose of paying its indebtedness if there was no fraud in the sale.

The same court held in the case of Graves *vs.* Hall, 32 Texas, 666, that an assignment made in good faith, by one member of a firm composed of two members, of the assets of the firm for the benefit of creditors was valid.

One partner acting for the firm is competent to make an equitable assignment of partnership realty to secure either past or future firm indebtedness. (Baldwin *vs.* Richardson, 33 Texas, 27 and 28.)

In general partnerships at common law the power of one partner to assign the effects of the firm for the benefit of creditors is involved in doubt, but the weight of authority is that where all the effects of the firm are assigned, to be equally participated in by all the creditors, the conclusion is that he may.

Burrell on Assignments (4th ed.), sec. 86 *et seq.*, pages 121, 122, 123, 124, 125.

Whatever doubt might have enveloped the question of the right of one general partner to assign all of the partnership effects for the benefit of creditors heretofore, it is no longer an open question in Texas since the decision of the case of Graves *vs.* Hall, 32 Texas, 666.

But in the case at bar is a special partnership in which the partner executing the assignment was the only general partner and the only person authorized under our statutes to sign the firm name. (Rev. Stat., sec. 3444.)

2. Defendant's second exception (assigned as error 3, Transcript, page 152) reiterates the first, and takes the further following positions:

(1.) "That the assignment is void because made only for the benefit of such of W. T. Tuffly's creditors as would consent to accept their proportional share of the property conveyed and discharge him from their respective claims, and does not include within its provisions and benefits the cred-

itors of himself as copartner of the alleged firm of W. T. Tuffly, and does not attempt or purport to convey the entire partnership property of the firm, but only the individual property of said Tuffly and his property as a copartner of the alleged firm of W. T. Tuffly."

This exception raises, first, a question requiring the construction of the deed of assignment; and, second, the legality of an assignment in which the discharge of the debtor is a condition of the creditor's sharing the benefits of the assignment.

Plaintiffs maintain that the deed of assignment must be construed so as to carry out the intentions of the assignor. "The deed is to be construed by the *res gestæ;*" and thus courts are permitted to look to the circumstances and motives which led to its execution and the objects to be accomplished. Where it is ambiguous in its terms and admits of two constructions, that interpretation should be given to it which will render it legal and operative rather than that which will render it illegal and void. Under the maxim above cited courts have upheld assignments void in part (as containing a trust prohibited by statute) if otherwise valid, the maxim being held to apply as well where what is void is declared so by the statute as where it is so at common law, unless the prohibitory enactment declares that the deed by which the thing is done shall be void." (Burrell on Assignments, 4th ed., sec. 312, pp. 456 and 457.)

Applying these rules of construction as here set out *verbatim* as laid down in the text book referred to, is it true that the assignment "does not include within its provisions and benefits the creditors of himself as copartner of the alleged firm of W. T. Tuffly?" Look to the exhibits referred to in plaintiffs' petition, and the names of the creditors of the firm of W. T. Tuffly are given, and among them the names of the attaching creditors.

Again, this exception urges that the deed "does not attempt or purport to convey the entire partnership property

of the firm, but only the individual property of said Tuffly and his property as a copartner of the alleged firm of W. T. Tuffly." Let us look to the instrument. It recites: "Whereas the firm of W. T. Tuffly, composed of W. T. Tuffly, the general partner, and C. E. McLin, as special partner, finding it impossible to pay its debts as they mature, and being desirous of having a distribution of all the property of said firm, and the property of W. T. Tuffly, partnership and individual: Now, therefore, in consideration of the premises and one dollar to me in hand paid, I, W. T. Tuffly, hereby assign and convey and deliver possession of all and singular my property and effects, of whatever name and nature, both personal and real, and which I own as copartner and individually, and intended to include all property of which or in which I have any interest whatever, wherever the same may be, to Louis Tuffly, as assignee, for the purposes aforesaid," &c.

From these recitations of the deed of assignment the intention to convey the assets of the firm of W. T. Tuffly is obvious. The name of the individual and the name of the firm is identical, viz., W. T. Tuffly.

The special partnership could only act by him, and the considerations set out in the beginning of the deed which induced the conveyance show that he acted for the firm of W. T. Tuffly as well as for himself as an individual. The conveyance in the granting portion of the deed of all the property in which he had any interest necessarily carried the interest of the special partner, who has no power to act in any way in the management of the partnership interests.

Revised Statutes of Texas, art. 3444.

The assignor did not say in the granting portion of the deed "I, W. T. Tuffly the firm, and I, W. T. Tuffly the individual, hereby assign and convey," &c., but he did what was just as effectual—he declared the objects sought to be accomplished, which were, to have a distribution of all the property of said firm and the property of W. T. Tuffly, part-

nership and individual; and the name W. T. Tuffly signed to the deed is as much the firm name as it is his individual name.

The first section of the assignment law contains the rule of construction as follows, viz: That "every assignment made by an insolvent debtor or in contemplation of insolvency for the benefit of his creditors shall provide, except as otherwise herein provided, for a distribution of all his real and personal estate, other than that which is by law exempt from execution, among all his creditors in proportion to their respective claims, and, however made or expressed, shall have the effect aforesaid, and shall be construed to pass all such estate, whether specified therein or not."

It is submitted, therefore, that so much of the exception as denies the sufficiency of the deed of assignment to convey the firm and individual effects is bad and should be overruled.

McIlhenny Co. *vs.* Miller, 68 Texas, page 357.
Donoho *vs.* Fish Bros. & Co., 58 Tex., 166.
Coffin *vs.* Douglass, 61 Tex., 407.

The same exception denies the validity of the assignment because made only for the benefit of such as will accept the benefit of the assignment and discharge the debtor.

This exception is answered by an examination of the assignment act of 24th of July, 1879, as amended by the act of April 7, 1883. Section 3 of said first act as amended by the act of April 7, 1883, is as follows:

"Any debtor desiring to do so may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate and discharge him from their respective claims, and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto, and such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors on account of their respective claims,

and when paid they shall execute and deliver to the assignee for the debtor a release therefrom, provided that such debtor shall not be discharged from liability to a creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor."

This assignment, made under this law and authorized by it, is not void unless the act itself is void for some conflict with the organic law.

In construing this assignment act this Court will accept the interpretation of the supreme court of the State, such construction being local in its nature and not belonging to the general domain of commercial law.

Spear on the Law of the Federal Judiciary, pp. 649, 650, 651.

Aaronson *vs.* Deutsch, 24 Fed. Rep., p. 465.

Rice *vs.* Frayser, 24 Fed. Rep., 460.

Livermore *et al. vs.* Jenckes *et al.*, 21 How., 126.

Peeler's Law of Equity in U. S. Courts, pp. 217–218.

The supreme court of Texas, construing an assignment under the acts of the Legislature regulating assignments, have held that restricting the benefits of the assignment to accepting creditors only who should discharge the debtor did not invalidate the assignment.

Keating *vs.* Vaugh, 61 Tex., p. 521.

This decision is conclusive on the second question made in the defendant's second exception and assignment of errors (3). (Transcript, p. 152.)

III. Defendant's third exception (assigned as error 4, Trans., p. 152) raises the same point made in the last clause of the second exception, and is conclusively answered by the decision of Keating *vs.* Vaugh, 61 Tex., 521.

IV. Defendant's fourth ground of exception (assigned as error 5, Trans., p. 152) is that the assignment is void be-

cause it unlawfully hinders and delays creditors in, this, that it provides that the assignee is only to apply the proceeds of the property conveyed ratably or otherwise to the payment of the debts when he shall have sold, collected, and converted the entire property conveyed to him, whereas the law provides that an assignee shall make *pro rata* distribution whenever he shall have in his hands funds sufficient to pay ten per cent. of the debts due by the assignor.

The language of the deed as to the collection, conversion, and distribution of the assigned effects is as follows: "To take possession of the same and sell the same, collect and convert the same, and when so sold, collected, and converted to appropriate the same ratably or in full payment, as the case may be, of all my debts and the debts of the firm of W. T. Tuffly, *said assignee to proceed under the law aforesaid.*"

So far from directing the assignee, in distributing the proceeds, to pursue a method different from that pointed out in the act, he is directed to follow and obey it.

The language of the deed must be construed in connection with the provisions of the act which the deed itself directs the assignee to follow, and, so construing it, there is no necessary conflict between the deed and the law.

Even if there were a conflict between the deed of assignment and the act the law would govern and the deed be valid.

The assignment act provides for the proper course in such event. The deed would not be rendered fraudulent by such conflict, but the act provides for the removal of the assignee in case of fraud and the administration of the assigned estate in accordance with the law.

Fant *vs.* Ellsbury, 68 Tex., p. 1.
General Laws of Texas, 1883, p. 47.
Keller *vs.* Smalley & H., 63 Texas, p. 515.
Blum *vs.* Wellborne, 58 Tex., 157.
Wert *vs.* Schneider & Davis, Tex. Court Rep., July 1885, p. 233.

Defendant's fifth exception, assigned as error 6 (Trans., p. 153), is that "the assignment is illegal and void because it by its terms admits the individual creditors of W. T. Tuffly to an equal participation with copartnership creditors in the proceeds of the partnership property, and thereby gives them an unlawful preference over the creditors of the partnership."

The deed assigns both the individual and partnership property to the same assignee for the benefit of individual and partnership creditors, but it does not direct any violation of the rights of either individual or partnership creditors; but if it did do so this would not render the deed ineffectual to pass title to the property to the assignee, and the remedy of the creditors would be to remove the assignee if necessary and have the estate properly administered.

Fant *vs.* Ellsbury, 68 Texas, p. 1.
Keller *vs.* Smalley & Harris, 63 Tex., 514.
Blum *vs.* Wellborne, 58 Tex., 157.

The sixth ground of exception is that the petition does not show that any of the creditors of said W. T. Tuffly have consented to or accepted the terms of said alleged assignment, and does not show the amount or value of the claims of such creditors.

It is not necessary that the petition should show that any creditor had accepted its terms.

Thomas *vs.* Chapman, 62 Tex., 193.

The seventh assignment of error is:

"The court erred in overruling defendant's objection to the introduction in evidence of the deed of assignment from W. T. Tuffly to Louis Tuffly, which objections are:

"1. Because it showed on its face that Mrs. C. E. McLin was a partner in the firm of W. T. Tuffly.

"2. That she was scheduled as a creditor of said firm.

"3. Because the said assignment thereby allows her to participate in the benefits of the assignment and thereby reserves

a benefit to one of the partners and gives her an unlawful preference over the creditors of the partnership."

Transcript, p. 153. VII.

Defendant in error makes this counter-proposition to objection 1 above:

"That the deed of assignment shows on its face that Mrs. C. E. McLin was a special partner in the firm of W. T. Tuffly (see deed of assignment hereinbefore set out), and that the general partner only is authorized to sign the firm name."

Art. 3444, Revised Statutes of Texas, is as follows:

"The general partners only shall be authorized to transact business and sign for the partnership and bind same."

Art. 3443 is as follows:

"Such partnerships (limited partnerships) may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law, and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the sum so contributed by him or them to the capital stock."

The defendant in error makes this counter-proposition to the second and third objections above urged:

That even if the deed of assignment, by reason of Mrs. C. E. McLin being scheduled as a creditor, be construed to direct payment to her ratably with the other scheduled creditors, yet the deed of assignment is not thereby rendered void, and the trustee should have been compelled to execute the trust in accordance with the law.

Fant *vs.* Ellsbury, 68 Texas, p. 1.

McCart *vs.* Maddox, 68 Texas, p. 459.

The eighth assignment of error is as follows:

"The court erred in overruling defendant's objections to

the introduction in evidence of the notice of the formation of special partnership between W. T. Tuffly and Christine E. McLin, which objections were on the ground that it was not in compliance with law, in this, that it does not state the terms of the partnership fully; it fails to state the general nature of the business intended to be transacted by the alleged partnership; the period at which the partnership is to commence, how long it is to be continued, or when it is to terminate, and also omits to state where the business is to be transacted; and the court erred in allowing said notice to be read in evidence over defendant's said objections."

Transcript, p. 163. VIII.

Defendant in error asserts this proposition in answer to said eighth assignment of error: That the published notice of the formation of the special partnership between W. T. Tuffly and Christine E. McLin was properly admitted in evidence, and while not *reciting all* the matters contained in the *recorded certificate of partnership referred to* same and was sufficient.

*Statement under this Proposition.*

The certificate of partnership is as follows:

THE STATE OF TEXAS, }
*County of Harris.* }

We, W. T. Tuffly and Mrs. Christine E. McLin, hereby certify that we have formed a copartnership under the firm name of W. T. Tuffly, under which firm name the business of such copartnership shall be conducted.

The general nature of the business intended to be transacted is a general retail and wholesale, if they see proper, fancy and staple dry goods and notionestablishment in the city of Houston, Texas.

W. T. Tuffly is and will be the general partner of such partnership, resident of the city of Houston, Texas, and Mrs. Christine E. McLin is and will be the special partner of such

partnership, whose residence is also in said city of Houston, Texas.

That said Mrs. Christine E. McLin has contributed the sum of six thousand four hundred and nineteen and $\frac{36}{100}$ dollars to the common stock.

That said partnership is to commence on the 16th day of April, 1884, and continue for the space of two years, to end of the 16th of April, 1886.

(Signed) W. T. TUFFLY.
CHRISTINE E. MCLIN.

(Acknowledged before notary for record April 24, 1884.)
Transcript, p. 31.

Then follows the affidavit of W. T. Tuffly, the general partner, that Mrs. C. E. McLin had contributed to the common stock of said partnership the sum specified in said certificate, and that said sum had actually and in good faith been paid in cash. (Transcript, p. 32.)

Then follows in due form the certificate of the county clerk that said certificate of partnership, with the authentication thereof, was filed for registration in his office April 25, 1884, at 9 o'clock a. m., and was duly recorded. (Transcript, p. 32.)

The published notice of the formation of the special partnership (to the admission in evidence of which above objection was made) is as follows:

*Copartnership Notice.*

The undersigned give notice that they have formed a copartnership under the firm name of W. T. Tuffly, having the following terms, as will appear by their executed and recorded certificate: W. T. Tuffly is the general partner; Mrs. Christine E. McLin is the special partner, and has contributed to the common stock the sum of six thousand four hundred and nineteen $\frac{36}{100}$ dollars.

(Signed) W. T. TUFFLY.
CHRISTINE E. MCLIN.

Transcript, p. 37.

This notice was published in the Houston Evening Journal for six successive weeks from April 25, 1884. (Transcript, p. 38.)

AUTHORITIES.

Art. 3445, Revised Statutes of Texas, is as follows:

"The persons desirous of forming such partnership (limited partnership) shall make and severally sign a certificate which shall contain—

"1. The name or firm under which the partnership is to be conducted.

"2. The general nature of the business intended to be transacted.

"3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.

"4. The amount of capital which each special partner shall have contributed to the common stock.

"5. The period at which the partnership is to commence and the period at which it is to terminate."

Art. 3449, Revised Statutes of Texas, is as follows:

"No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, nor until an affidavit shall have been filed, as above directed; and if any false statement be made in such certificate or affidavit all the persons interested in such partnership *shall be liable for all the engagements thereof as general partners.*"

Art. 3450, Revised Statutes of Texas, is as follows:

"The partners shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry, in such newspapers as shall be designated by the clerk in whose office such registry shall be made, and if such publication be not made *the partnership shall be deemed general.*"

Carhart & Bro. *vs.* J. M. Killough & Lewis Moore, White & Wilson Condensed Reports, Court of Appeals of Texas, sections 112, 113.

The ninth assignment of error is as follows:

"The court erred in overruling defendants' objections to the introduction in evidence of the agreement of the creditors of the firm of R. W. McLin & Co., dated April 24, 1884, and attached to plaintiff's amended petition and replication, filed November 17, 1885; which objections were—

"1. That it was irrelevant and immaterial for the purpose for which it was offered, viz., to show notice to defendants. Morrison, Herriman & Co., Dunham, Buckley & Co., and William H. Lyon & Co., of the formation and existence of said special partnership between W. T. Tuffly and Christine E. McLin, and to sustain plaintiff's plea that defendants were estopped to deny the formation and existence of said special partnership or to show that it was not legally formed or carried on; and

"2. That it was not the way to prove notice of the formation of a special partnership and to prove estoppel against defendants.

"And the court erred in allowing said agreement to be read in evidence over said objections thereto, as shown by second bill of exceptions."

Defendant in error makes this proposition to the first objection urged to the admission of said instrument:

That even if the court should hold that the published terms of said special partnership were not sufficiently specific to give constructive notice to the general public of its character that nevertheless, to persons who had actual notice of the limited liability of one partner and dealt with the firm with that understanding, it was in law a limited partnership, and the evidence was material and relevant to show such actual notice.

That recognizing it and dealing with it as a special partnership before the notice was published or even the certificate filed was a waiver on their part of these requirements of the law, and it was, as to them, a special partnership by contract.

*Statement under this Proposition.*

The instrument objected to is as follows:

"The undersigned, creditors of the late firm of R. W. McLin & Co., in consideration of the assumption of all the indebtedness of said late firm by the firm of W. T. Tuffly, composed of W. T. Tuffly, general, and Christine E. McLin, special partner, as appears by the certificate by the (them) signed, hereby release the estate of R. W. McLin, deceased, from any and all liability on account of the obligations of said firm of R. W. McLin & Co., either by note or open account or otherwise.

"Houston, April 24, 1884.

"(Signed)

"Morrison, Herriman & Co., by Andrew Wilson.
"Dunham, Buckley & Co., by Andrew Wilson.
"W. H. Lyons & Co., by Andrew Wilson.
"Teft, Weller & Co., by Andrew Wilson.
"Whitfield, Powers & Co., by Andrew Wilson.
"Miles & Gibbs, by Andrew Wilson.
"Wm. O. Headley & Son, by Andrew Wilson.
"Halstead, Haines & Co., by Andrew Wilson.
"P. J. Willis & Bro., by Andrew Wilson.
"Wm. E. Burlock & Co., by Andrew Wilson.
"Wm. A. Drown & Co., by Andrew Wilson.
"Rosenheim, Levis & Co., by Andrew Wilson.
"Thos. Russel & Co., by Andrew Wilson.
"Frankenthal Bros., by Andrew Wilson.
"Max, Judd & Co., by Andrew Wilson."

The certificate of special partnership between Christine E. McLin and W. T. Tuffly was acknowledged April 24, 1884, and said certificate was filed in clerk's office at 9 o'clock on April 25, 1884. (Trans., pp. 31, 32.)

That Andrew Wilson, as agent of all the creditors above named, was present when said special partnership was formed, and advised the same and knew all details of same. (Trans., p. 48.)

And said certificate and release above bear the same date,

viz., April 24, 1884. This release was made before the certificate was filed and before notice was published.

That the following creditors of R. W. McLin & Co. who signed said release were creditors of the firm of W. T. Tuffly on March 23, 1885, the date of said assignment, and accepted thereunder (see release above and exhibit to replication, filed November 17, 1885. Trans., pp. 15, 16, and 17), viz:

Teft, Weller & Co., of New York.
P. J. Willis & Bro., of Galveston.
Max, Judd & Co., of St. Louis.
Rosenheim, Levis & Co., of St. Louis.
Wm. O. Headley & Son, of New York.

That said special partnership was to end April 16, 1886, and assignment was made March 23, 1885. (Trans., pp. 31, 33.)

Authorities:

Story on Partnership, section 130.
Baxter *vs.* Clark, 4 Iredell (Law), 127.
White & Wilson's Condensed Reports.
Texas Court of Appeals, sections 112, 113.
Lachomette *vs.* Thomas, 5 Robinson's La., 172.
Parsons on Partnership, 538.

Defendant in error makes this further proposition under said ninth assignment of error:

That all the creditors of R. W. McLin & Co. who signed said agreement to release said firm in consideration of their respective claims being assumed by the firm of W. T. Tuffly, a firm composed of W. T. Tuffly, general partner, and Christine E. McLin, special partner, as appears by the certificate by them signed, are estopped as against the assignee of the firm of W. T. Tuffly, representing other cred-

itors who signed said release, from denying the existence and formation of such special partnership, as well as from setting up want of notice of the formation of such special partnership, but no injury could have resulted from the admission of this evidence, for in a special charge the court instructed the jury in reference thereto. (See Trans., p. 92.)

Reference is here made to statement under last proposition.

Authorities:

Defendant in error makes this further proposition under this assignment:

That the certificate of special partnership between W. T. Tuffly and Christine E. McLin, under the firm name of W. T. Tuffly, having been made, acknowledged, filed and recorded, together with the affidavit of the general partner that the special partner had in good faith actually contributed the amount specified in the certificate in cash, the *indispensable prerequisite* to *the formation* of said special partnership had been complied with and same *was formed.* (Trans., pp. 31, 32.)

Authorities:

Art. 3449, Revised Statutes of Texas, is as follows:

"No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, and if any false statement be made in such certificate or affidavit all persons interested in such partnership shall be liable for all the engagements thereof as general partners."

Story on Partnership, section 130.
Baxter *vs.* Clark, 4 Iredell (Law), 12.
White & Wilson's Condensed Reports.
Texas Court of Appeals, sections 112 and 113.

The tenth assignment of error is as follows:

The court erred in charging the jury "that if limited partnership alleged by plaintiff was recognized as such in its inception by the three attaching creditors, defendants herein, and likewise during its existence was dealt with and credited as such by them, as well as sued therefor and its property attached as such after the assignment, and that the other creditors so treated and dealt with it and accepted the assignment to plaintiff as such, and that Mrs. McLin, named therein as the special or limited partner, and W. T. Tuffly, named therein as a general partner, always treated it as a special or limited partnership, and that Mrs. McLin loaned it money as claimed, and subsequently sued the plaintiff as its assignee therefor, then and in such case they might likewise deem the same a limited partnership and regard the assignment to plaintiff as valid." (Trans., p. 154.)

Defendant in error under tenth assignment makes this proposition:

That when a limited partnership is legally *formed* creditors thereof who have dealt with it as such cannot, after it has assigned, secure a preference for themselves over other creditors who have accepted the benefits of the assignment by attaching the assigned property, although the conduct of the special partner may have been such as to render her liable as a general partner, and although the conduct of the general and special partner may have been, pending the existence of such partnership, actually and intentionally fraudulent.

Authorities:

"*And be it further enacted*, That no fraudulent act, intent, or purpose of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefits hereof, but any such fraudulent act, intent, or purpose on the part of the assignee shall be sufficient cause for his removal as being an unsuitable

person to perform the trust, and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments or for the protection of his interests in the assigned property."

Act of April 7th, 1883, Laws 18th Legislature, p. 46.
Sayles Texas Civil Statutes, vol. 1, pp. 63,64 (art. 65*f*).
Fant *vs.* Ellsbury, 68 Tex., p. 1 *et seq.*

The eleventh assignment of error is as follows:

The court erred in refusing to charge the jury, at the request of defendants, that if they found for plaintiffs they should return a verdict for the amount only of the claims of creditors who had consented to the assignment (excepting Mrs. McLin's claim) according to the proof, with interest thereon at the rate of eight per cent. per annum from January 1, 1886.

Defendant in error makes this proposition under this assignment:

That the measure of damages was the fair market value of the goods converted, with legal interest from date of conversion, and the amount due accepting creditors and costs of executing the assignment, &c., could not be considered in the suit for conversion.

Authorities:

Schooler *vs.* Hutchins, 66 Texas, p. 324 (Supreme Court).

Defendant in error, under the 12th, 13th, 14th, 15th, 16th, and 17th assignments of error, assert these propositions:

1.

Granting that a special partner of a limited partnership has, by any fraudulent conduct, become liable as a general partner, yet an assignment by such special partnership,

executed by the avowed general partner, would be valid, because (1) a release of such special partnership would not discharge such special partner from *liability as a general partner*, and for the conclusive reason that the statute declares that fraud on the part of the assignor shall not invalidate an assignment.

2.

The special partnership of W. T. Tuffly had legal existence as such, and it was therefore immaterial, after its assignment, whether the special partner had become liable as general partner or not, and the charges asked making the validity of the assignment depend on whether such liability had been incurred were properly refused.

Statement under this proposition:

1. The certificate of special partnership was filed in compliance with the law.

2. The affidavit of the general partner was attached, that the special partner had actually and in good faith paid in cash the sum specified in said certificate. The certificate was duly authenticated for record.

3. The certificate was duly filed in the county clerk's office for record and was recorded.

4. The notice of the special partnership was published in a newspaper for six weeks after said certificate was filed.

(This notice alone is challenged as defective.)

5. The attaching creditors, plaintiffs in error herein, had actual notice of the formation and existence of the special partnership and dealt with it as such on the day before the certificate of special partnership was filed in the clerk's office and before this notice (now challenged as defective) was published at all.

Transcript, pages 31, 32, 37, 38.

6. The plaintiffs in error, attaching creditors herein, sued *the special partnership*, W. T. Tuffly, after the assignment had

been executed, and attached the assigned property in the hands of the assignee.

Transcript, page 71.

The act of the Legislature of Texas is as follows:

"SECTION 3. Any debtor desiring to do so may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate and discharge him from their respective claims, and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto, and such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors on account of their respective claims, and when paid they shall execute and deliver to the assignee for the debtor a release therefrom: *Provided*, That such debtor shall not be discharged from liabilities to a creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor.

"SECTION 6. * * * *And be it further enacted*, That no fraudulent act, intent, or purpose of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors assenting thereto from the benefits thereof; but any such fraudulent act, intent, or purpose on the part of the assignee shall be sufficient cause for his removal as being an unsuitable person to perform the trust, and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments, or for the protection of his interests in the assigned property.

"SECTION 10. No assignment shall be declared fraudulent and void for want of an inventory or list, as provided herein, but the absence of the same shall be deemed *prima facie* evidence that the assignor or debtor has concealed or secreted some of his estate from his assignee or creditors, and whether said list be prepared and filed or not the judge of the district or county court in whose court the proceedings shall have been filed and having jurisdiction of the estate assigned may, on application of the assignee or of any creditor of the assignor or debtor, or without such application if the judge see fit, at all times require, upon such reasonable notice as the judge may direct, the assignor or debtor or any other person to attend

and submit to an examination on oath upon all matters relating to the disposition made or status of the property of the estate assigned, including all transactions in the past bearing upon the rights of the assignee or creditors with respect to the estate in assignment, as contemplated by law."

The statute further provides how these orders may be enforced, &c.

Act of April 7th, 1883, General Laws of Texas, pages 46, 47.

Art. 3448, Revised Statutes of Texas, is as follows:

"No partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed, and recorded, nor until an affidavit shall have been filed as above directed (that is, that the special partner has contributed her share in actual cash, &c.); and if any false statement be made in such certificate or affidavit all the persons interested in such partnership *shall be liable for all the engagements thereof as general partners.*"

Art 3457:

"If it shall appear that by the payment of interest or profits, or both, to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital stock, with interest."

NO DILEMMA.

That the limiting the benefits of the assignment to such creditors only as will consent to accept their proportionate share of the assigned estate is not a preference of one creditor over another within the meaning of the laws of the State of Texas.

Article 3460 is as follows:

"Every sale, assignment, or transfer of any property or effects of the partnership made by such partnership when insolvent or in contemplation of insolvency, or after or in

contemplation of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every judgment confessed, lien created, or security given by any such partnership under the like circumstances and with like intent shall be void as against the creditors of such partnership."

Act of May 12, 1846.

Sayles' Texas Civil Statutes, vol. II, art. 3460.

This article is found in substance in the assignment act, article 65, Sayles' Texas Civil Statutes.

Art. 65*a*, Sayles' Texas Civil Statutes, is as follows:

"Every assignment made by an insolvent debtor or in contemplation of insolvency for the benefit of his creditors shall provide, except as herein otherwise provided, for a distribution of all his real and personal estate, other than that which is by law exempt from execution, among all his creditors in proportion to their respective claims, and, however made or expressed, shall have the effect aforesaid and shall be construed to pass all such estate, whether specified therein or not; and every assignment shall be proved or acknowledged and certified and recorded in the same manner as provided by law in conveyances of real estate or other property."

Act of March 24, 1879; took effect July 24, 1879.

Any debtor deserving to do so may make an assignment for the benefit of such of his creditors only as will consent to accept their proportional share of his estate and discharge him from their respective claims, and in such case the benefits of the assignment shall be limited and restricted to the creditors consenting thereto; and such debtor shall thereupon be and stand discharged from all further liabilities to such consenting creditors on account of their respective claims, and, when paid, they shall execute and deliver to the assignee for the debtor a release therefrom, provided that such debtor shall not be discharged from liabilities to a creditor who does not receive as much as one-third of the

amount due and allowed in his favor as a valid claim against the estate of such debtor.

Amendment act April 7, 1883. Article 65*c*, Sayles' Texas Civil Statutes.

Article 65*s*, Sayles' Texas Civil Statutes, is as follows:

"Any attempted *preference* of one creditor or creditors of such assignor shall be deemed fraudulent and without effect."

Act of March 24, 1879; took effect July 24, 1879.

"The act of April 7, 1883, also provides that no fraudulent act, intent, or purpose on the part of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefit thereof."

The very statute that prohibits preferences of one creditor over another permits an assignment for the benefit of such creditors only as will consent to accept their proportionate share and release the debtor, &c.

The general assignment laws passed July 24, 1879, as amended April 7, 1883, relate to the same subject-matter as article 3460, passed in 1846, and, being a complete system for the administration of insolvent estates, supersedes said article 3460, though not inconsistent with it.

Ellsbury *vs.* Fant, 68 Tex., p. 1 (Supreme Court).

"Article 3640, passed May 12, 1846, was not changed, nor was any section of the special partnership law changed, but simply reproduced in the codification. The act of March 24, 1879, and all other acts passed by the 16th Legislature were not affected by the repealing clause contained in the act of codification. On the contrary, the law enacting the

present code expressly subjects the codification to any modification made by the laws of the 16th Legislature (1879)."

See introduction to Sayles' Texas Civil Statutes, vol. I, page vi, numbering at bottom of page, matter referred to here at top; also see Sayles' Texas Civil Statutes, vol. II, page 740, numbering at bottom of page.

"The provisions of the Revised Statutes, so far as they are substantially the same as the statutes of the State in force at the time when the Revised Statutes shall go into effect or the common law in force in this State at said time, shall be construed as continuations thereof and not as new enactments."

"Sec. 20 of the final title provides that no laws, general or special, enacted at the present session of the Legislature shall be in any way affected by the repealing clause of this title: *Provided, That any law passed by the sixteenth Legislature in conflict with any provisions of this act shall be the law of the State, this act to the contrary notwithstanding.*"

General Provisions, final title, sections 19 and 20, Revised Statutes of Texas.

The assignment conveyed the firm property of the firm of W. T. Tuffly, and, Mrs. McLin being a special partner, it was not necessary for her individual property to be conveyed.

"Art. 3444. The general partners only shall be authorized to transact business and sign for the partnership and bind same."

"Art. 3454. The special partnership shall be conducted under a firm name, in which names of general partners only shall be inserted."

"Art. 3455. Suits are to be brought against general partners as if there were no special partners."

The plaintiffs in error, who were attaching creditors, were cognizant of how the special partnership of W. T. Tuffly was formed, and waived by their conduct, so far as they were

concerned, the requirements of the law of limited partnerships, and the partnership between Mrs. McLin and W. T. Tuffly was, so far as they were concerned, a limited partnership.

Art. 3443, Sayles' Texas Civil Statutes, vol. II (p. 175, paging at bottom), note 1.

When a preference forbidden by law is made in an assignment the *preference* is void and not the assignment.

The published notice was sufficient, and no one was misled or in danger of being misled by reason of any omission therein.

Pferman *vs.* Henkel, 1 Brds., 145.

Sayles' Texas Civil Statutes, vol. II, art. 3443 (p. 175, paging at bottom), note 1.

The reason that an assignment by one partner of a general partnership made for the benefit of consenting creditors only was held bad was that it stipulated for a release of the firm, which would, of course, operate a release of the partner not joining and not conveying his property. This is held in Donohoe *vs.* Fish Bros. & Co.

In the case at bar, a partnership purporting to be a special partnership, in which the admitted liability of the special partner is only her amount in the partnership concern, the release of the special partnership, as such, is stipulated for on part of all consenting creditors. But there is no release of Mrs. McLin stipulated for therein, and the release of said special partnership would not have had the effect to release Mrs. McLin. To make this more clear let us grant that these creditors, instead of attaching the estate, had accepted, and that the estate had been distributed, and then that they had sued Mrs. McLinn, asserting her liability as a general partner, and that she had pleaded the release of the special partnership, such a plea would not have met the case against her, and exception to

such a plea would have been good. If her plea had set up her own wrong, viz., her fraudulent withdrawal of her part of the special partnership, capital, or any other fact tending to make her a general partner the court could have not sustained her plea, for it would have been to allow her to take advantage of her own wrong.

Not so in the case of Donohoe *vs.* Fish Bros. & Co., 58 Tex., 166. If the creditors had assented to the assignment, received their *pro rata*, executed a release of the general partnership, the partner who did not sign the assignment would have been released by the release of the general partnership. This was the reason of the decision in that case and it does not apply to the case at bar.

The court expressly say in that case that they do not decide that one partner cannot make an assignment of the firm effects. They decide that such a conveyance stipulating for a release is bad.

In case of a special partnership the general partner is the only person who could do so.

Hence the charges asked making the validity of the assignment depend on whether or not Mrs. McLin had become liable as a general partner were properly refused.

The law favors an equitable distribution of the effects of an insolvent.

Windham *vs.* Patty & Mathews, 62 Texas, p. 494.
Coffin *vs.* Douglass, 61 Texas, p. 406.

The twelfth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth assignments of error (Trans., pp. 154, 155, and 156), being charges requested by plaintiff in error which were refused by the court, were, and so far as material, substantially given in a charge theretofore requested by plaintiff in error, viz:

If the proof shows you that McLin never in fact contributed the amount to the common stock necessary to make her a special partner, or that she afterwards altered and

diminished the amount of her capital stock, and that these facts or either of them were unknown to the attaching creditors, who are defendants herein, at the time they dealt with the firm and sued W. T. Tuffly, then you are instructed that neither the recognition and dealing by them with Tuffly and Mrs. McLin as a limited partnership, nor the suing of W. T. Tuffly in ignorance of said facts, estops or precludes them or any of the defendants from showing that said partnership was never in fact legally formed as a limited partnership, for the reason above stated, nor from showing that it afterwards, by reason of the alteration and diminution of Mrs. McLin's capital stock, was rendered a general partnership. (Transcript, p. 92.)

The above charge submitted to the jury the issues as Mrs. McLin's payment in cash of her contribution to the special partnership, as to diminishing same, and as to whether or not she became a general partner, &c. There was a conflict of evidence, and the finding of the jury is conclusive.

All or nearly all the creditors of W. T. Tuffly accepted the benefits of this assignment, and counsel for plaintiff in error is mistaken as to that on page 19 of his brief. (See page 11 of his brief.)

Counsel for defendant in error asks the indulgence of the Court in considering his brief herein. It was prepared without the benefit of brief for plaintiff in error, except for a short time, after his own had gone to the printer. But for this much matter therein would have been eliminated.

Respectfully submitted,

W. C. Oliver,

*Of Counsel for Louis Tuffly, Defendant in Error.*

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IN THE

# Supreme Court of the United States.

## OCTOBER TERM, 1889.

*No. 137*

JAMES G. TRACEY ET AL., PLAINTIFFS IN ERROR,

*vs.*

LOUIS TUFFLY, ASSIGNEE, DEFENDANT IN ERROR.

ARGUMENT FOR DEFENDANT IN ERROR.

*The General Assignment Law of Texas Applies to Insolvent Special Partnerships.*

May it please the Court, the general assignment law of the State of Texas was passed by the Sixteenth Legislature. It, together with all the other acts passed at that session, are added to the Revised Statutes of Texas as now codified in an appendix.

The codification extended to but did not include the acts of the Sixteenth Legislature (acts of 1879), and hence their being placed as an appendix in the back of the code.

The act of the Legislature creating the code, the embodiment of the laws of the State, was passed February 21, 1879, and provided that it should take effect September 1, 1879.

By rules of construction in the final title, Nos. 19 and 20, it is provided—

Rule 19. The provisions of the Revised Statutes, so far as they are substantially the same as the statutes of the State in force at the time when the Revised Statutes shall go into effect or the common law in force at said time, shall be construed as continuations thereof and not as new enactments.

Rule 20. No laws, general or special, enacted at the present session of the Legislature shall be in any way affected by the repealing clause of this title: *Provided*, That any law passed by the Sixteenth Legislature in conflict with any provisions of this act shall be the law of the State, this act to the contrary notwithstanding.

The limited partnership law of the State was not changed in any particular, and hence is, under rule of construction No. 19, above quoted, to be construed as a mere continuation of the old act.

The general assignment law passed March 24, 1879, in case it conflicts with any provisions of the code under rule of construction No. 20, above quoted, is to be the law of the State, any conflict with the code to the contrary notwithstanding.

But it is confidently submitted there is no conflict.

The general assignment law of the State is a complete system in itself of voluntary insolvency or bankruptcy. Its object, gathered from its terms and from the judicial construction given to it, is to secure a just and equitable division of the estates of such insolvents as have recourse to it among their creditors.

For this good purpose the Legislature has vested by the terms of the act supervisory powers in the courts of the State over the person and estate of the assignor and assignee and others, being an enlargement of the original equity powers of the courts, to the end of securing to creditors an equitable distribution of such estates. It contains a rule of construction for assignments, provides for the removal of the as-

signee on complaint of a creditor and the appointment of a successor, and for the examination and purging the conscience of the assignor or any other person in whose hands any of the estate may be charged to be, and makes the concealment of property by the assignor a felony. It makes mortgages on merchandise exposed for sale and in possession of the mortgagor void.

It declares any preference of one creditor or creditors of the assignor shall be deemed fraudulent and void; so does the law relating to limited partnerships.

But the assignment act, while condemning and forbidding the preference of one creditor by the assignor, permits and authorizes an assignment for and on behalf of accepting creditors only. Evidently, therefore, the legislative construction and intention is that such a provision is not a preference.

The special partnership law provides (article 3460) every sale, assignment, or transfer of any property or effects of the partnership made by such partnership when insolvent or in contemplation of insolvency, or after or in contemplation of insolvency of any partner with intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every judgment confessed, lien created, or security given by any such partnership under the like circumstances and with like intent shall be void as against creditors of such partnership.

But article 65*i* (Sayles' Texas Civil Statutes) of the assignment law provides:

"All property conveyed or transferred by the assignor previous to and in contemplation of the assignment with the intent or design to defeat, delay, or defraud creditors or to give a preference to one creditor over another shall pass to the assignee by the assignment, notwithstanding such transfer; and the assignee or, in case of his neglect or refusal, any creditor or creditors may, in his name, upon securing such assignee against cost or liability, sue for, recover, collect, and cause the same to be applied for the benefit of creditors as

other property belonging to the debtor's estate in the hands of the assignee; but if it shall appear in such action that the purchaser of any such property bought the same of the assignor in good faith and for a valuable consideration and without any reason to believe that the debtor was conveying or transferring the same with the intent or design aforesaid, such purchaser shall be held to have acquired, as against the assignee and creditors aforesaid, a good and valid title to such property."

This section of the assignment law is as potent to render this assignment void as the preceding section from the special partnership law.

But it is obvious that this deed of assignment is not obnoxious to either section. It does not prefer one creditor over another. I have brought these sections of the law into juxtaposition to show the court that one rule is not adopted for insolvent special partnerships and another for other insolvents to destroy the argument that no special partnership can assign, on account of the section quoted, by showing a very similar section in the assignment law itself.

The true construction of the section of the partnership law quoted in argument would be to permit this assignee to recover goods fradulently made way with, to set aside judgments confessed in fraud, and to enjoin foreclosure of liens given in fraud of creditors.

It is submitted, therefore, that the general assignment law applies to special partnerships as well as other insolvents. It does so apply by its terms. Whence comes the limitation upon its application? Not from the section quoted, for the brother of that section is in the assignment law itself. It is submitted, therefore, that this assignment is not void under article 3640, for it does not prefer one creditor over another.

The very object of the assignment law is to prevent preferences and to secure an equitable distribution of the estates of insolvents.

In 1846 the statute declaring every sale creating a preference of one creditor over another by an insolvent special partnership was passed, thus indicating that a just distribution of such estates should be had, but it had no provision looking to such distribution; it simply inhibited preferences of one creditor over another.

Between 1846 and July 24, 1879, when the assignment law took effect, any other insolvent than a special partnership could make preferences and do as he pleased with his own.

After the assignment law went into effect all insolvent debtors were prohibited from making preferences, and the assignment act, going further than merely prohibitory preferences, provided for the distribution of the estates of all insolvents, enacting a complete system therefor.

Wherever the special-partnership section was defective the assignment law supplied, viz., provided for a distribution of the insolvent estate, conferring powers on the courts for its accomplishment. The inherent powers of a court of equity could have been invoked to distribute the estate of an insolvent special partnership prior to the present assignment law. That jurisdiction has been aided and enlarged by the assignment act, which has marked out a course of procedure. If the firm of W. T. Tuffly ever had legal existence as a special partnership and made an assignment as such the fact that the special partner had become liable as a general partner by operation of law would not justify an attachment of the estate assigned by a creditor of such special partnership, but the remedy of such creditor was by a proceeding in equity in the name of the assignee to enforce said liability and subject the property of such special partner to the payment of the firm debts.

In the case of Windham *vs.* Patty & Mathews, 62 Texas, p. 491, Supremé Court Reports, an insolvent person who had no property joined the assignor in a deed of assignment and pretended to be a partner of the firm for the purpose of

having his debts paid out of the assigned estate and to secure a release. The real creditors of the assignor, whose interest in the assigned estate would be thus reduced, attached the assigned estate. There was an action by the assignee of the estate for the value of the goods, and a judgment in his favor in the court below. On appeal the supreme court, in affirming the judgment, say: It seems to us the real question to be decided might be more clearly stated thus: Was the deed sufficient to pass all the property of the makers, partnership as well as individual, to the assignee, and were the makers insolvent?

If these questions are aswered in the affirmative the motives of the makers, whether fair or fraudulent, are matters of little importance. Citing Blum *vs.* Wellborn, 58 Tex., 157 (supreme court), admitting the facts as above stated to be true, the court say the attaching creditors "could have had their rights protected by coming in under the assignment and placing the facts before the court so that they could be acted on in the distribution of the proceeds of the property among the creditors and claimants."

"Our courts of equity have an enlarged jurisdiction in such cases. General assignments, says Mr. Justice Roberts (in Carleton *vs.* Baldwin, 22 Tex., 730), in trust for the benefit of creditors, with the rules pertaining to them, may be said to be the creatures of a court of equity.

"The act of July 24, 1879, instead of limiting has rather strengthened and enlarged their jurisdiction. It was passed in order that the property of those who cannot pay their debts may be disposed of under the *eye of* the court and the proceeds equitably distributed among the creditors without unnecessary cost."

See Moody & Co. *vs.* Carroll, 71 Tex., p. 144.

The assignee, under the assignment law, is an officer of the law. He can be restrained and prevented from making sales by the court; can be required to make sales. Indeed, he is but the hand of the court—controlled by the law—the

terms of which govern the administration of the estate and not the provisions of the deed of assignment where there is a conflict. Hence the construction that illegal provisions in the deed do not render it void. Illegal preferences are void but not the assignment.

By the execution of a valid deed of assignment the assignment law makes even the property of a general partnership a trust fund in the hands of the assignee for the benefit of creditors, to be administered and distributed under the eye of the court.

The estate of an insolvent special partnership has, since May 12, 1846, when the special partnership law was passed, been a trust fund for the benefit of the creditors, to be equally distributed.

The diligent creditor can never secure a preference after the court takes possession of the estate through the assignee. The estate is then in *custodia legis.*

The leading case on the consequences of the insolvency of limited partnerships, says Mr. Bates in his work on limited partnerships, is Innes *vs.* Lansing, 7, page 583, in which it was ruled that as the Legislature particularly aimed at equality among creditors of an insolvent limited partnership, *yet did not specify how to enforce such equality*, a court of equity would regard the assets of such parnership as a special trust fund from the time of insolvency, and that any creditor, although he has not obtained judgment on his claim, could apply to the court on behalf of himself and all other creditors to enforce the trust on an allegation of insolvency and wind up and distribute the assets equally, or that he could pursue this claim at law and by judgment and execution acquire a preference unless some other creditor had in the meantime obtained a decree for equal distribution.

Bates' Limited Partnership, sec. 156, p. 180.

Section 159 of Bates' Law of Limited Partnership, p. 182, states the law thus:

Under the statutes forbidding conveyances to preferred creditors in case of existing or contemplated insolvency, it is, clear that the assets become in a measure trust funds, so far as any action of the partners is concerned from the time of insolvency, in so far as to enable the court to set aside such voluntary preference; but, in so far as any action of creditors to obtain a priority by hostile proceedings is concerned, there is no trust, according to later cases, which will prevent this, *except from the time the court takes possession* of the property or *fund*, either by decree or receiver, up to which time liens obtained by hostile proceedings acquire a preference, and equality will be enforced by the chancellor among the creditors at large.

Sec. 189 of Bates' Limited Partnership.

In line with this authority, in the case at bar from the time that Louis Tuffly, assignee, went into possession under the deed of assignment he became the officer of the law, the hand of the court, and no priority could be acquired unless, indeed, the deed of assignment had not apt words to vest the title, or the general partner had not authority to execute the assignment.

Has the general partner of a limited partnership authority in case of insolvency to make an assignment for the benefit of creditors? Under and by the very terms of our assignment law he has. But what of this authority under the limited partnership law of Texas, which is similar to New York in most respects? In 1837, in Mills *vs.* Argall, 6 Paige, 577 and 582, there may be some doubt as to the right of the general partner to assign all the effects for the benefit of creditors without the express or implied assent of the special partner.

Under this rule the assignment at bar is good, for Mrs. McLin gave her express assent thereto by accepting or seeking to accept its benefits.

But in 1854, in the special term of the superior court of New York, it was held that as the general partners have

the management of the business they had power to make a general assignment for the benefit of the creditors, in case of insolvency, without the consent of a special partner; and it was further held that the fact that the alleged special partner was really a general one by reason of failure to contribute his capital and the falsehood in the affidavit certifying its actual contribution did not render his assent necessary, for he was under the disabilities, without the immunities, of a special partner.

Robinson *vs.* McIntosh, 3 E. D. Smith, 221.

In Robinson *vs.* McIntosh, 3 E. D., Smith, it was held that an assignee for the benefit of creditors of the firm could have a suit in equity to compel a special partner to pay into the estate the amount of capital which he had agreed but failed to contribute, although he is also liable *in solido* for falsehood in the affidavit, and although the general partner might be estopped by being a party to the fraud of falsely certifying that the capital had been actually paid in. (Robinson *vs.* McFarland, 3 E. D., Smith 221.)

Also see Lancaster *vs.* Choate, 5 Allen, 530, that a special partner, liable as a general one for non-publication of a renewal, may be included in insolvency proceedings.

It appears, therefore, both on reason and authority, the general partner may make an assignment for the benefit of creditors.

It also appears that the fact of the special partner becoming a general partner by any misconduct does not make her a necessary party to the conveyance, and that the proper remedy for the assignee is by bill in equity to recover her liability as general partner to the estate.

Now, this being a trust fund and our assignment law making provision for the assignee bringing all persons before the court; or, he failing, giving the creditors the right to do so in the name of the assignee, why did the creditors in this case seize the trust estate? Because they were seeking to

do the very thing which it is the object of the statute to prevent, viz, secure a preference for themselves.

It is submitted that in the light of the foregoing decisions it is immaterial whether the special partner became liable as a general partner or not, and the assignments of error complaining of the charges refused on that subject are not well taken.

Then the question remains—

1. Was the special partnership ever legally in existence? The only error assigned or objection to its organization is as to the notice.

2. Did it contain apt words to convey the partnership and individual property?

This question was raised by exception (2). (See page 5 of brief or argument herein.)

Respectfully submitted,

W. C. OLIVER,
*Of Counsel for Louis Tuffly, Assignee,*
*Defendant in Error.*